

***Case No COMP/M.3347 -
SCHNEIDER
ELECTRIC / MGE - UPS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/02/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05/02/2004

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3347 – SCHNEIDER ELECTRIC / MGE-UPS
Notification of 23.12.2003 pursuant to Article 4 of Council Regulation
No 4064/89**

1. On 23.12.2003, the Commission received a notification of a proposed concentration by which the undertaking Schneider Electric Industries S.A.S., controlled by Schneider Electric S.A. (“Schneider”, France), acquires within the meaning of Article 3(1)(b) of Council Regulation 4064/89¹, as last amended by Regulation (EC) No 1310/97² (“the Merger Regulation”) sole control of the undertaking MGE UPS Systems S.A. (“MGE”, France) by way of purchase of shares.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Schneider is mainly active in the production and sale of products and systems in the sectors of electrical distribution, industrial control and automation.
4. MGE is active in the production of systems to ensure power supply continuity. These devices allow systems to keep running when the primary power source fails due to loss of power (blackouts or brownouts).

¹ OJ L 395, 30.12.1989 p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

² OJ L 180, 9. 7. 1997, p. 1; corrigendum OJ L 40, 13.2.1998, p. 17.

II. THE OPERATION AND THE CONCENTRATION

5. MGE is wholly owned by Financière MGE, in turn 100% owned by MGE Finances SAS. Schneider currently holds a [...] % stake in MGE Finances SAS. The transaction consists in the acquisition of sole control by Schneider of MGE Finances SAS and, consequently, of MGE, by means of purchase of shares from a group of financial investors ([...] % stake) and part of the shares held by the management and employees of MGE (around [...] %). Therefore, the operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of Schneider and MGE in 2002 was above 2,500 million EURO (9,653 million EURO for Schneider and 498 million EURO for MGE), and the aggregate Community-wide turnover was above 100 million EURO for each of Schneider ([...] million EURO) and MGE ([...] million EURO). The combined aggregate turnover of Schneider and MGE was above 100 million EURO in each of at least three Member States, in which the turnover of each Schneider and MGE was above 25 million EURO (France, Spain and the United Kingdom). They do not both achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension under article 1 (3) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

Relevant product markets

Schneider products

7. Schneider products affected by the transaction are the following: (i) Miniature Circuit Breakers (MCBs), (ii) Molded Case Circuit Breakers (MCCBs), (iii) Low Voltage Switches (LVs), (iv) Low Voltage Industrial Contactors (LVICs). MGE buys from Schneider all these products, as well as Transformers Low Voltage – Low Voltage (T-LV-LV) and Metal Frames (MF), for their integration in its own products.
8. The notifying party considers these products as separate relevant product markets. This approach is the same as in case COMP M.2283 – Schneider/Legrand, although in this case it was stated that 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. The question was left open since the effects on competition were similar irrespective of the definition adopted. In this case, these products are bought individually from Schneider (or other suppliers) for their integration in UPS devices, and there are no indications that they are sold to MGE as integrated in other products. For the purpose of this case each component will be analysed as a separate relevant product market. Nevertheless, the question whether the relevant product markets in the switchboard segment are constituted by the components individually or by the switchboards in which they are further integrated can be left open as the present operation does not give rise to competition concerns in this specific segment.

MGE products

9. MGE produces and/or sells products such as power conditioning devices, surge suppressors, static transfer switches and inverters. However these are neither horizontally nor vertically affected markets and do not integrate Schneider components. The assessment of this operation will be focused on MGE's production of devices which allow systems to keep running when the primary power source fails due to loss of power (blackouts or brownouts), as it is the only product market affected by the transaction, as a result of a vertical relationship with Schneider's products.
10. The notifying party considers that this market may be analysed at four different levels: (i) the sector of the "secured power", which includes all products designed to provide an alternating current power source as well as products concerned with converting or controlling/managing an externally-provided source of power, (ii) a smaller market constituted by the products which only provide an alternating power source. This market is constituted by devices based on two different technologies: the static and the rotating operated uninterruptible power supply ("UPS") devices, (iii) an even smaller product market constituted only by the static-operated UPS devices (this is the market where MGE is active) and (iv) a sub-segmentation of the static-operated UPS devices market according to the power ratings: one market for power ratings between 0 and 10 kVA (the low power range static UPS devices, "low UPSs"), and a second market for power ratings above 10 kVA (medium and high power range static UPS devices, "medium-high UPSs").
11. As far as the first level is concerned, the "secured power" sector has been previously analysed by the Commission in case IV/M.1380 -Siebe/BTR. In this case, two segments were analysed within the broader market of "power systems": (i) standby and motive³ batteries and uninterruptible power supply systems, and (ii) products concerned with the managing and conversion of power supplies, including AC-DC (Alternating Current to Direct Current) and DC-DC (Direct Current to Direct Current) converters and surge suppressors. These two segments together constitute the so called "secured power" sector mentioned by the notifying party.
12. As far as the third level is concerned the results of the market investigation in the present case have broadly confirmed the segmentation proposed by the notifying party by which the static-operated UPS devices below 10 kVA and above 10 kVA would constitute two separate relevant product markets. However, a final definition of the relevant product market can be left open since the operation does not give rise to competition concerns under any possible market definition.

Relevant geographic markets

Schneider products

13. The notifying party states that the relevant geographic market for all the components sold to MGE is at least European-wide, and in particular for MCBs and MCCBs. It bases this definition on the fact that these components do not vary according to the country in which the UPS devices are sold and that MGE buys identical components regardless of the final destination.

³ Electrical energy transport-transformation.

14. However, in the Schneider/Legrand case the Commission came to the conclusion that the markets of components such as the ones concerned in this case, had a national dimension.
15. Moreover, the fact that the downstream products are sold at European level does not necessarily imply that the markets of the upstream products have the same geographic dimension. However, for the purpose of this case, a final conclusion on this point is not necessary since the assessment does not change whatever definition is chosen.

MGE products

16. The notifying party submits that the relevant geographic market for both low and medium-high UPSs is regional. Four different regions can be considered: (i) EMEA, comprising Europe, Middle East and Africa, (ii) USA, Canada and a large part of Central and South America, (iii) Japan, and (iv) Asia-Pacific.
17. In case IV/M.1380 - Siebe/BTR the Commission the market investigation pointed out that the relevant geographic market for the “power systems” could be either European-wide or World-wide but the question was left open.
18. MGE has only production plants in France from where it delivers its products throughout the EEA. However, the results of the market investigation in the present case indicate that the relevant markets are nation-wide.
19. With respect to low UPSs, the investigation has shown that the importance of maintenance and after sales services is very low as usually these products do not require those services. On the other hand differences in prices in different countries are not very high (5-10%). However, the market investigation has shown that market shares at national level of companies producing low UPSs devices are always much lower (never above 10%) when the companies do not have national presence in a given country.
20. The vast majority of low UPSs are sold by MGE to distributors. Low UPSs distribution is usually organised by means of national non exclusive agreements. This is the case for wholesale electrical distributors (although with some of them additional worldwide framework of cooperation exists), IT distributors or mass retailers.
21. All these indications might lead to the conclusion that the geographical scope of the market is national.
22. As regards medium-high UPSs, maintenance and after sales services become much more important. Although the investigation has shown that these services can be delivered either by the manufacturers themselves or by representatives authorised and trained by them, large differences in market shares at national level (i.e. above [40-50]% for high-medium UPSs in [...] and [...], and below [0-10]% in countries where the company does not have national presence such as [...] or [...]) would indicate that the markets are national. This view is reinforced by the fact that medium-high UPSs products are usually sold by MGE’s national subsidiaries or through MGE’s authorised representatives in a given country.
23. Nevertheless, for the purpose of this case, the final definition of the relevant geographic markets for both low and medium-high UPSs can be left open since the operation does not give rise to competition concerns under any possible market definition.

Assessment

24. The operation does not give rise to the creation of horizontal overlaps. Schneider produces various components which are either integrated into other products (captive use) or sold to manufacturers of other products, such as MGE, who integrate these components in their production process. Therefore, the operation will only give rise to vertical relationships.
25. In the upstream market, there are several affected markets in which Schneider has a market share equal or above 25%. Table 1 below shows Schneider’s position in these affected markets for each relevant product market.

Table 1

Country	Relevant Product Market			
	MCBs	MCCBs	LVSs	LVICs
Austria	*	[40-50]%	*	*
Belgium	[30-40]%	[50-60]%	*	[30-40]%
Denmark	[30-40]%	[30-40]%	*	*
Finland	*	[20-30]%	*	*
France	[40-50]%	[50-60]%	[30-40]%	[30-40]%
Ireland	*	[20-30]%	*	*
Italy	*	[20-30]%	*	*
Portugal	[20-30]%	[20-30]%	*	[30-40]%
Spain	[40-50]%	[50-60]%	[20-30]%	[40-50]%
Sweden	*	[20-30]%	*	*
The Netherlands	[20-30]%	[30-40]%	*	*
UK	[20-30]%	[30-40]%	*	*
Norway	[20-30]%	[20-30]%	*	[30-40]%
EEA	[20-30]%	[30-40]%	[10-20]%	[20-30]%

(*) Market share below 25%.

26. Regarding MGE products, there are no affected markets either at EEA, European, EMEA (as defined by the notifying party: Europe, Middle East and Africa) or World-wide level, but, if the dimension of the market were to be considered as nation-wide, there would be a number of affected markets. Table 2 shows MGE’s position in the various alternative geographic market definitions. At national level, only countries where MGE’s market share is above 25% are shown.

Table 2

Country	Relevant Product Market		
	Low UPSs	Medium-High UPSs	Low + Medium-High UPSs
Belgium	[20-30]%	[50-60]%	[30-40]%
France	[30-40]%	[50-60]%	[40-50]%
Portugal	*	[20-30]%	*
Spain	[30-40]%	[30-40]%	[30-40]%
The Netherlands	[0-10]%	[30-40]%	[10-20]%
Norway	[30-40]%	[20-30]%	[30-40]%
EEA	[10-20]%	[20-30]%	[10-20]%
EMEA	[10-20]%	[10-20]%	[10-20]%
World-wide	[<5]%	[10-20]%	[0-10]%

(*) Market share below 25%.

27. MGE's purchases of Schneider components during 2003 are shown in table 3 below :

Table 3

Component	Total MGE's purchases (x 1000 EUR)	MGE's purchases from Schneider (x 1000 EUR)
MCBs	[...]	[...]
MCCBs	[...]	[...]
LVSs	[...]	[...]
LVICs	[...]	[...]
T-LV-LV	[...]	[...]
MF	[...]	[...]

28. It is clear from the information above that MGE is already covering almost all its needs of components from Schneider, which makes the risk of further downstream foreclosure arising from the operation unlikely. Even if MGE were to re-direct all its purchases from Schneider's competitors to Schneider, this would only have some effect on the market of T-LV-LV which is not affected by the transaction. In these circumstances, it can be concluded that the vertical integration resulting from the transaction will have no impact on Schneider's competitors..

29. As indicated above, MGE has only production plants in France from where it delivers its products throughout the EEA and it buys all the above components in France.

30. MGE's purchases in the EEA from Schneider represent a quite low percentage of Schneider's sales of these components. MGE's purchases of MCB represent only [<5]% of Schneider's sales in France. The corresponding figure for MCCB is [<5]%, for LVS it is [20-30]% and for LVIC it is [<5]%. The value of the UPS segment is very low compared to the total components' market (insert figure to demonstrate). Given the limited size of the UPS segment, the capacity needed in the upstream market to cover all the needs of the downstream market of UPSs products does not need to be very large. Therefore, as there are other important companies in the upstream markets, such as Legrand (market shares: [10-20]% for MCB in the EEA and [20-30]% in France; [0-10]% for MCCB in the EEA and [0-10]% in France), Hager (market shares [10-20]% for MCB in the EEA and [20-30]% in France), ABB (market shares: [20-30]% for MCCB in the EEA and [30-40]% in France; [20-30]% for LVS in the EEA and [10-20]% in France, [0-10]% for LVIC in the EEA and [0-10]% in France), GE (market shares: [0-10]% for MCCB in the EEA and [0-10]% in France; [0-10]% for LVS in the EEA and [0-10]% in France), Siemens (market shares [10-20]% for LVIC in the EEA and [<5]% in France), Moeller (market shares [10-20]% for LVIC in the EEA and [0-10]% in France) and others, there are no grounds to conclude that these companies would not be able to counteract any attempt of anticompetitive behaviour from Schneider towards MGE's competitors.

31. It is also necessary to assess whether the notified concentration could result in foreclosure of MGE's competitors due to Schneider's position in the distribution channels. MGE distributes its products through the following channels: (i) wholesale electrical distributors, (ii) IT dealers/distributors, (iii) mass retailers (such as [...]), and (iv) Original Equipment Manufacturers (OMS) or assemblers of computer hardware (such as [...]). Schneider usually sells its products through distributors such as wholesale electrical distributors, and could possibly use its strong position in this channel as supplier to encourage distributors to

purchase and stock MGE's products (offering for example rebates on purchases). Competition concerns could arise if the prevailing conditions would allow Schneider to successfully pursue such a strategy, and if this could force MGE's competitors out of this channel.

32. Regarding medium-high power UPSs, MGE's sales through the wholesale electrical distribution channel is not very important. At EEA level it represents only [<5]% of UPSs' sales. Table 4 shows the percentage of sales through this channel in the countries where MGE has the strongest position:

Table 4

% of MGE's Medium-High UPSs' sales through the wholesale electrical distribution channel

	Belgium	France	Portugal	Spain	The Netherlands	EEA
% of sales	[<5]%	[0-10]%	[10-20]%	[<5]%	[<5]%	[<5]%
MGE's market share	[50-60]%	[50-60]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%

33. Furthermore, the market investigation has confirmed that, as a general rule, medium-high UPSs are not stocked by wholesalers or, if this is the case, are stocked on specific demands or requirements from specific customers. In each of the countries set out in the above table MGE faces competition from several smaller, but established competitors. Therefore, any attempt by Schneider to use its power on the wholesale electrical distribution channel, is unlikely to have more than a negligible impact.
34. Regarding low UPSs devices, which are generally stocked by wholesalers, MGE's position is not so strong. At national level MGE's sales are above 25% only in Norway ([30-40]%) and three EU countries (Belgium: [25-35]%; France [30-40]%; Spain: [30-40]%). In Norway only [<5]% of MGE's low UPSs devices are sold through the wholesale electrical distribution channel, so, as in the case for medium-high UPSs, the likely impact on competition that would follow on any attempt by Schneider to put pressure on this distribution channel would also be negligible.
35. The table below shows the percentage of sales through the wholesale electrical distribution channel in the rest of the countries where MGE has a market share above 25%:

Table 6

% of MGE's Low UPSs' sales through the wholesale electrical distribution channel

	Belgium	France	Spain	EEA
% of sales	[20-30]%	[40-50]%	[20-30]%	[40-50]%
MGE's market share	[25-35]%	[25-35]%	[25-35]%	[10-20]%

36. In the light of the above figures, the possible risk for foreclosure in the wholesale channel is probably higher in France than in the other markets. However, even in France, MGE's market shares are not currently indicative of a dominant position, and the investigation has not produced evidence that the combination with Schneider's other activities would lead to a significant increase.
37. In this context, it must be borne in mind that any influence by Schneider would only apply in the wholesale electrical distribution channel. As mentioned above, there are other distribution channels which are also very important. This is particularly the case for the IT dealers/distributors channel, through which important sales of low UPSs are made. For example, through the IT channel MGE distributes [40-50]% of its sales in France, [70-80]% in Belgium, [50-60]% in Spain and [40-50]% at EEA level. Schneider has no specific influence in this channel. Thus, even in a worst-case scenario (Schneider being able to exert some influence in the wholesale electrical distribution channel), the IT channel, together with mass retailers and OEMs, will remain fully available for MGE's competitors.
38. Second, although as recognized by an external study⁴, penetrating into this market requires presence in distribution channels, and in the mass channels in particular, and that, in order to achieve this presence, price is the key element, the same study points out that the low UPS market is highly competitive. The low UPS market is technologically mature and improvements are quite exhausted. Because of this limited innovation, product differentiation is very low, customers do not have any brand preference and therefore competition is based on prices. This fact has also been confirmed by the market investigation.
39. Another reason which makes this market highly competitive is the low barriers to entry from the manufacturing point of view, which has led to a steady decrease in prices over the last years⁵. Technology is not a problem and most of it is part of the public domain or can be easily established. There are accordingly a great number of suppliers currently active in the market: there are more than 100 vendors that manufacture UPSs devices. Production largely takes place from facilities in countries such as Taiwan, Korea or Malaysia, where costs are much lower. Two new significant manufacturers have also entered the market in the last five years: Belkin (a US company with production facilities in China) and General Electric, (through it's acquisition of the Swiss company IMV). Furthermore, as mentioned in paragraph 19, maintenance and after sales services are not relevant in the purchasing decision of low UPSs devices as they usually do not need these services. The table below shows the position of MGE, its biggest competitors, **and the fact that a high number of individually small competitors account for about 40% of the market (both at national and at EEA level)**. The figure for "others" includes direct imports by actors at various stages of the electrical distribution channel.

Table 7

	Belgium	France	Spain	EEA
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⁴ Frost & Sullivan report on « World UPS Markets. A277-27" (2002)

⁵ Frost & Sullivan report on « World UPS Markets. A277-27" (2002), p. 2-51, 2-59,2-60 & 2-61

MGE	[20-30]%	[30-40]%	[30-40]%	[10-20]%
APC	[30-40]%	[20-30]%	[10-20]%	[30-40]%
Invensys	[<5]%	[<5]%	[<5]%	[0-10]%
Chloride	[<5]%	[0-10]%	[0-10]%	[0-10]%
Liebert	[<5]%	[<5]%	[<5]%	[<5]%
Others	[30-40]%	[20-30]%	[30-40]%	[20-30]%

40. Furthermore, slow demand over the last years⁶ has resulted in a production overcapacity in the market, with an estimated capacity utilisation rate between 40% and 50%⁷. For instance, MGE's current capacity utilisation rate is around [40-50]% of what they could produce in the short term and with minor investments.
41. From the above, it can be concluded that any attempt by the merger Schneider/MGE to significantly increase prices or foreclose competitors from the wholesale channel is unlikely to succeed. In any such scenario, MGE's competitors would normally, given the low levels of capacity utilisation, find it attractive to increase production, thereby exerting a high competitive pressure in all distribution channels, including the wholesale electrical channel.
42. There are also no indications that this operation would lead to any change in market structure that could create or strengthen a situation of collective dominance conducted by MGE and APC. **This conclusion is based on some elements already discussed above, namely the high number of players accounting for a relatively large overall market share** (more than 40% of the market both at national and at EEA level belongs to MGE and APC's competitors), the absence of entry barriers and the decrease in prices over the last years.
43. In the light of the above, it can be concluded that the operation will not lead to the creation or strengthening of a dominant position under any of the alternative market definitions.

⁶ Frost & Sullivan report on « World UPS Markets. A277-27" (2002), p. 2-51, 2-59,2-60 & 2-61

⁷ Parties' estimates.

V. CONCLUSION

44. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

Mario MONTI
Member of the Commission