

***Case No COMP/M.4475 -  
SCHNEIDER  
ELECTRIC / APC***

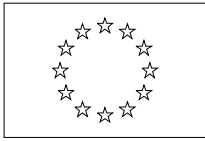
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**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(2) NON-OPPOSITION  
Date: 08/02/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.02.2007

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(2) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.4475 - Schneider Electric / APC  
Notification of 12.12.2006 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On December 12, 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which the French company Schneider Electric SA (hereinafter referred to as "Schneider" or "the notifying party") intends to acquire sole control over the US-based company American Power Conversion Corporation ("APC") by means of purchase of shares.

I. THE PARTIES AND THE TRANSACTION

- (2) Schneider is a company active in the manufacturing and sale of products in the sectors of electrical distribution, industrial control and automation. It supplies – among others – uninterruptible power supply systems ("UPS") through its

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

subsidiary MGE UPS Systems S.A.<sup>2</sup> and also manufactures certain components for UPS.

- (3) APC is active in the design, manufacturing and sale of power protection equipment and related software and accessories for computers, communications and related equipment, in particular UPS and related products.
- (4) The Transaction consists in the acquisition of sole control over APC by Schneider. The parties entered into a merger agreement on 28 October 2006, pursuant to which Schneider will acquire all outstanding shares of APC from the current shareholders by means of an acquisition vehicle. Consequently, APC will be 100% owned and controlled by Schneider. The transaction, therefore, constitutes a concentration in the sense of Art. 3 (1) (b) of Council Regulation (EC) No 139/2004.

## II. COMMUNITY DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Schneider EUR 11 728 million, APC EUR 1 502 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Schneider EUR [...] million, APC EUR [...] million). In addition, none of the undertakings concerned achieves two-thirds of its Community-wide turnover in one Member State. The notified operation therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

## III. COMPETITIVE ASSESSMENT

### (a) Market definitions

- (6) The transaction involves two companies active in the supply of UPS devices. UPS devices are systems used to clean the power signal and to provide back-up power in case of a power cut. These systems can be used for various applications, such as individual PCs and devices for small businesses, but also applications concerning the telecommunications industry, hospitals, airports, internet service providers, banks, security systems, production lines and transport companies. Apart from UPSs, the parties also manufacture and sell other products, such as surge suppressors, which lead to overlaps, but not to affected markets in the present case, and circuit breakers that lead to vertical links.

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<sup>2</sup> The Commission had the opportunity to examine UPS markets in early 2004 when Schneider took over MGE UPS systems S.A., creating some vertical links, cf. case COMP/ M.3347 –Schneider Electric/MGE-UPS.

### ***Relevant Product Market***

- (1) UPS devices
  
- (7) The notifying party submitted that UPS devices are part of a broad market, the market for secured power products, which would include all devices which provide a power source and allow systems to keep running when the primary power source is lost or defaulting. This market would include, in addition to UPS devices, very different products such as batteries, surge suppressors, and power converters (e.g. alternating current to direct current). Furthermore, Schneider indicated that, if UPS devices were to be singled out from other devices, two segmentations should be made according to the capacity of UPS devices: a first segmentation with a cut-off point at 10 kVA<sup>3</sup> and a second segmentation with a cut-off point at 3 kVA, leading to the definition of markets for 0-3 kVA UPS devices, 3-10 kVA UPS devices, and above 10 kVA UPS devices.

### **Distinction between UPS devices and other secured power devices**

- (8) In the previous case Schneider/MGE-UPS, the investigation of the Commission indicated that singling out UPS devices from other "secured power" was likely to be relevant.
  
- (9) The Commission also notes that the notifying party, Schneider, did not provide any argument in support of the broad market definition it submitted but focused its explanations on the differences between different ranges of UPS devices. The market investigation did not bring either any argument that would have supported Schneider's broad market definition and, to the contrary, confirmed that UPS should be singled out from secured power products. In fact, from a supply-side as well as from a demand-side perspective, UPS cannot be substituted by other secured power devices, such as, for example, power converters or batteries. This lack of substitutability between UPS devices and other secured power products is also reflected by third party studies provided by Schneider<sup>4</sup> which focus exclusively on UPS devices.
  
- (10) In light of the above, the Commission takes the view that UPS devices and other secured power devices are part of different product markets.

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<sup>3</sup> VA are volts\*amperes. Volts measures voltages, whereas ampere is the measurement unit for electrical current or the flow of electrical charge per second; kVA stands for kilo-VA.

<sup>4</sup> *Frost & Sullivan*, World UPS Markets, Study No. A981-27, 2006 (Annex 5.4.4 to Form CO); *Venture Development Corporation*, 2005-2006 Power Protection Market Intelligence Program, Volumes III and IV (Annex 5.4.5 to Form CO).

## Distinction between UPS devices below 10kVA and UPS devices above 10kVA

- (11) Regarding the distinction between UPS devices below 10kVA (or "low UPSs") and UPS devices above 10kVA ("medium-high UPSs"), the Commission found in the case Schneider/MGE-UPS clear elements pointing to the relevance of making such a distinction.
- (12) As explained by the notifying party, such a distinction is relevant due to the lack of substitutability both from the demand and supply sides. From the demand-side, low UPSs are typically used to protect individual PCs and devices for small businesses. They ensure that no data is lost which has not yet been permanently stored into the system when a brief power failure occurs. Medium and high UPSs are used for large businesses and industrial uses, for example in industries which require a consistent and reliable supply of energy. Larger high UPSs are used in a wide variety of sectors (telecommunications industry, hospitals, airports, banks, etc.), whenever it is crucial that the machines are constantly operative.
- (13) As regards prices, as shown by the data provided by the notifying party<sup>5</sup>, they vary significantly as low UPSs can be sold for EUR 100 to end-users, while medium/high UPS devices can cost up to EUR 50 000. Also, the type of clients are not the same since the main clients of low UPSs are electrical technology (ET) or information technology (IT) wholesalers, whereas the primary customers of medium-high UPSs are system integrators, contractors, and end-users.
- (14) From the supply-side, the parties argue that the industrial organization is different for low and medium-high UPS devices, as they are based on different technologies: lower UPS devices are so-called single phase devices, while larger UPS devices are three phase devices.<sup>6</sup>
- (15) The market investigation largely confirmed the argument of the notifying party. As explained by one of the major customers of Schneider, the segmentation between low and medium high UPSs "could be justified for both technical and commercial reasons. First, below 10kVA, the UPS devices are single-phased devices, whereas above 10kVA they are three-phase devices. Second, below 10kVA, distribution plays a major role while above 10kVA, sales are mainly direct sales carried out by the manufacturers."<sup>7</sup> In addition, the market definition showed that, from the

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<sup>5</sup> Annexes 7.4.A and 7.4.B of the form CO.

<sup>6</sup> Single-phase UPS are energized by a single alternating voltage, while three-phase UPS devices have an electrical system with three different voltage lines that carry sine wave forms of 120 degree out of phase from one another. There are also other technological features of UPS, i.e. standby, line-interactive and on-line technology. The use of these technologies in practice corresponds roughly with the distinction between small UPS (standby), medium (line-interactive) and large UPS (online). However, these technologies cannot be used as guidance for the segmentation, since they can be and actually are used in UPS of all power ranges, for example, even small and medium UPS can be on-line or large UPS can be standby, depending on their use.

<sup>7</sup> Non-confidential answer of the Rexel Group to Article 11 letter – questionnaire to customers – question 8 on product market definitions.

demand side, purchasing criteria are different on the two segments<sup>8</sup>. In particular, pricing is generally the first criterion for low UPSs (especially for IT wholesalers), whereas quality, brand, and services are more important than pricing for medium-high UPSs.

- (16) In view of these elements, the Commission takes the view that it is relevant to make a distinction between UPS devices below 10kVA and UPS devices above 10kVA.

#### Distinction between UPS devices below 3kVA and UPS devices in the 3-10kVA range

- (17) Beyond the distinction between low and medium-high UPS devices, the notifying party indicated that a further line should be drawn between UPS devices below 3kVA and UPS devices in the 3-10kVA range. According to the notifying party, UPS below 3 kVA are usually so-called "plug to plug" devices, i.e. simple UPS used to protect very small electronic devices, which can be installed (plugged in) very easily. By contrast, UPS above 3 kVA are used for the protection of more complex devices and usually have to be hardwired.
- (18) The market investigation has to a large extent confirmed the notifying party's view. Many respondents explained that "0-3kVA represents a plug and play philosophy, whereas the 3-10kVA range targets more complex home office and small businesses"<sup>9</sup> and requires electrical skills for the setting-up and maintenance of systems<sup>10</sup>. However, some respondents claimed that, in their view, one cut-off point at 10kVA would be sufficient to define markets.
- (19) In any case, while the definition of a market for 0-3kVA and 3-10kVA is more likely to be relevant than the definition of a market for 0-10kVA, the question of the exact segmentation can remain open since it does not alter the conclusions of the competitive assessment nor the assessment of the remedies.

#### UPS devices above 10kVA

- (20) As regards the area above 10 kVA, the market investigation has broadly confirmed that a market for UPS devices above 10kVA can be defined. Some respondents explained that it would be relevant to implement a segmentation with additional cut-off points (e.g. 50kVA, 80kVA, 200kVA, etc.) but no consensus emerged. However, given the limited sales of APC of above 10kVA UPS devices, the

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<sup>8</sup> Article 11 letter – questionnaire to customers – question 13 on the five main purchasing criteria.

<sup>9</sup> Non-confidential answer of Info-Quest SA to Article 11 letter – questionnaire to customers – question 8 on product market definitions.

<sup>10</sup> Non-confidential answer of PkElectronics NV to Article 11 letter – questionnaire to customers – question 8 on product market definitions.

question of whether it would be warranted to define narrower product markets can remain open.

(2) Other Products

- (21) Schneider also manufactures and sells products that are integrated in UPS devices: miniature circuit breakers (MCB), molded case circuit breakers (MCCB), low voltage switches (LVS), low voltage industrial contactors (LVIC), transformers low voltage-low voltage (TLV-LV), and metal frames for integration (MF).
- (22) The notifying party considers these products as separate relevant product markets. This approach is the same as in cases M.2283 – Schneider/Legrand and Schneider/MGE-UPS, and, in view of the lack of any evidence that would support alternative market definitions, the same product market can be delineated in this case: the market for MCBs, the market for MCCBs, the market for LVSs, the market for LVICs, the market for TLV-LVs, and the market for MFs.

***Relevant Geographic Market***

UPS devices below 3kVA and between 3kVA and 10kVA

- (23) The notifying party submitted that the markets for UPS devices below 10kVA are at least EEA wide in scope. To support this argument, the notifying party relies on the existence of EEA-wide standards and of plants able to cater the demand all over Europe. In addition, the notifying party submitted that prices are homogeneous across the EEA.
- (24) In Schneider/MGE, while leaving the exact geographic market definition for UPS devices open, the Commission indicated that the market investigation yielded several elements that hinted at the existence of national markets. The Commission found that the majority of low UPS devices were distributed on the basis of national distribution agreements and that a national presence in a given country was an important competitive advantage to reach high market shares. In the present case, Schneider stated that these factors are not enough to dismiss the existence of European-wide markets. It submitted that the distribution channels are similar in all Member States, and, in addition, APC even negotiates with some of its main clients at the European level.
- (25) The market investigation provided a mixed picture on the scope of these markets. On the one hand, price differences across member states seem indeed to be limited (up to 10%) and some customers do indeed source at a European-wide level. On the other hand, the latter seems to remain the exception rather than the rule and competitors explained that expanding in a neighbouring country for a UPS supplier already active in a given EEA country still represents a challenge: "the competitive

environment, distribution channels, and buyer behaviour can all be different by country and vary based on the maturity of the market. Additionally, most UPS contracts are tied to local/national customers rather than a multi-national level. As a result, expansion into adjacent EEA countries is comparable to expanding into a new market and requires the development of new channel partners, end user awareness/pull and an understanding of the top competitors for each UPS kVA range".<sup>11</sup> Moreover, the difference in market positions of competitors across member states "may be caused by the supplier having a long history of direct presence in a country (working with consultants, distributors, and customers)"<sup>12</sup>, which would show that a local and long-established presence in a given country is important.

- (26) Moreover, as regards the specific segment below 3 kVA, the market investigation seems to demonstrate that there are differences in the brand awareness between various EEA countries, depending, for example, on the time a supplier has been active in a specific country, which seem to correspond to the market share level in that respective country. In addition, the market investigation confirmed that a national sales force could be an important competitive advantage.
- (27) The question whether these markets are national or EEA-wide in scope, however, can ultimately be left open in this case, as there remain serious doubts as to the compatibility of the transaction with the common market on the basis of any possible geographic market.

#### UPS devices above 10kVA

- (28) As regards the possible market for UPS devices above 10kVA, the notifying party also explained to the Commission that the market is EEA-wide again due to the existence of European standards and of plants able to meet all the demand over Europe.
- (29) In Schneider/MGE-UPS, the Commission came to the conclusion that large differences in market shares at national level corresponded to the companies' national presence in certain countries.<sup>13</sup> This was in particular due to the importance of service in this market.
- (30) Schneider explained in its notification that servicing and maintenance can be subcontracted to local representatives, and therefore direct local presence would not be required. However, the Commission notes that Schneider has its own local representatives in important national markets and servicing and maintenance is

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<sup>11</sup> Non-confidential answer of Emerson Network Power to Article 11 letter – questionnaire to competitors – question 13 on geographic market definitions.

<sup>12</sup> Non-confidential answer of Eaton Corporation to Article 11 letter – questionnaire to competitors – question 13 on geographic market definitions

<sup>13</sup> M.3347 –Schneider Electric/MGE-UPS, para. 19-22.



outsourced only in countries where sales achieved are minor. Furthermore, the market investigation suggested that the markets are still national. On the side of competitors, the remarks quoted above and regarding the 0-10kVA segment remain valid and in the eyes of customers, good after-sales and maintenance services are key given the complexity of the devices.

- (31) The question of whether this market is national or EEA-wide in scope can however be left open as it does not alter the competitive assessment of the present case.

#### Other products

- (32) Regarding the "upstream markets" (i.e. the market for MCBs, the market for MCCBs, the market for LVSs, the market for LVICs, the market for TLV-LVs, and the market for MFs), the notifying party explained that they are at least European-wide in scope as the components sold to manufacturers are the same throughout the world. The question of whether these vertical markets are EEA-wide or wider in scope can be left open in this case as vertical issues do not raise any competition concerns.

### **(b) Competitive assessment**

#### *Introduction*

- (33) The new combined entity would become by far the leading player in the market for UPS below 3 kVA. The proposed transaction leads the Commission to raise serious doubts in this market both at the national and the EEA levels as the probability is high that it would lead to a significant impediment of competition: the market investigation revealed that the merging parties are head-to-head competitors in this segment, with APC being the market leader. Competitors, as well as potential new market entrants, face significant barriers to entry and expansion, since strong relationships with distributors, a strong brand image, and product quality are key elements of competition in this area. The proposed transaction would therefore lead to the elimination of a competitor (MGE) which exerted significant competitive pressure on the market leader, APC. This holds true even if the product market considered is 0-10kVA UPS devices and the proposed transaction therefore leads the Commission to raise serious doubts on the 0-10kVA market for UPS devices both at the national and EEA levels.
- (34) By contrast, there are no competition concerns concerning the product market for UPS above 10 kVA. As regards the EEA level, the parties' combined market shares in these product markets, as well as the relevant HHI Index and Delta do not indicate any competition problems.<sup>14</sup> On the national level, the market

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<sup>14</sup> The parties have a combined market share of [20-30]%, HHI: [800-1200], Delta: [100-150].

investigation has not revealed any serious competition concerns, since there would still remain a considerable number of major players which compete effectively with the parties in the various sub-segments.<sup>15</sup>

**A. UPS below 3 kVA**

- (35) Following the transaction, the parties would have a combined market share of [40-50] % with an overlap of [10-20] % on the EEA-wide level in the segment of UPS below 3 kVA. The market shares on EEA level would be as follows:<sup>16</sup>

Market share (2005)	
MGE	[10-20%]
APC	[30-40%]
<b>COMBINED</b>	<b>[40-50%]</b>
Liebert/Emerson	[0-5%]
Powerware/Eaton	[0-5%]
Chloride	[0-5%]
Socomec	[0-5%]
Riello	[5-10%]
On-line	[0-5%]
GE	[0-5%]
Salicru	[0-5%]
Others	[20-30%]

[Source: parties' estimates]

- (36) As can be seen from the figures above, the transaction would combine the number one and number two in the segment below 3 kVA. The next 8 players (who primarily are UPS suppliers of higher kVA ranges, like MGE itself) would have a market share of [1-10] %, while there seems to be a fairly large number of fragmented smaller UPS producers, which are mostly low-cost companies coming from Asian Countries<sup>17</sup>.
- (37) The notifying party argued that the acquisition would not bring about any significant competition concerns. It relied on several arguments, notably that (i) MGE and APC are not close competitors, (ii) they do not use the same distribution patterns, (iii) there are low barriers to entry, (iv) capacity of the main competitors

<sup>15</sup> Remaining major players after the proposed transaction: Chloride (Masterguard), Liebert/Emerson, Powerware/Eaton, Riello, Socomec, AEG, Piller and GE.

<sup>16</sup> Figures are based on parties' own estimates for 2005.

<sup>17</sup> For example Asian producers such as Phoenixtec, Powercom and Delta. Some respondents to the market investigation refer to these companies as "no name" suppliers.

can easily be increased, and (v) prices were decreasing in the past years. However, the market investigation did not confirm the notifying party's argument.

*General results of the market investigation*

- (38) The market investigation revealed that APC is the undisputed number one player in the segment below 3 kVA, with a very high degree of brand recognition that amounts – in some countries – almost to the status of a generic brand. It also revealed that there are a number of other players whose brands are well recognized, but that they are by far not regarded as important as APC. In addition to these players, there are a number of suppliers which supply unbranded "no name" products. Competition in this segment takes place through brand awareness and access to distribution. It also takes place through price but customers still seem to be willing to pay a higher price for a branded product, in particular an APC product. According to the respondents in the market investigation, APC distinguishes itself from other suppliers through its distribution channel management (including training and marketing support), as well as investments in building and maintaining a strong brand for low power UPS.

*The merging parties are close competitors*

- (39) Contrary to the notifying party's statements concerning the question of whether they are close competitors, approximately half of the customers replying to the market investigation, when asked about close competitors of APC, stated that in the market below 3 kVA, the closest competitor for the market leader APC is MGE. MGE and APC are perceived as head-to-head competitors in the UPS below 3 kVA.
- (40) As mentioned above, the segment below 3 kVA is characterised, on the one hand, by the presence of a number of established brands of the traditional UPS suppliers (the market investigation reveals that APC is the clear leading brand in most EEA countries<sup>18</sup>, and considered by some customers even as a must-stock product, other established brands being MGE, Powerware, Socomec etc.) and, on the other hand, lower priced non-branded UPS products or UPS from less established brands from Asia<sup>19</sup>. The market investigation at the same time confirmed that brand image, in the view of the customers, is still a very important attribute of competition. Indeed, the competitors indicate that (local) sales forces and marketing programs put in place with various distribution channels play a very important role in supporting the sales of UPS under 3 kVA. Although an overall decrease of prices of the UPS

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<sup>18</sup> Except for France, Belgium, Spain, Norway and Malta, where MGE is stronger than APC.

<sup>19</sup> Such as Phoenixtec, Powercom and Delta. It is notable that, due to very standard technical features of UPS under 3 kVA, except for APC, which has its own production facilities for the UPS devices under 3 kVA, most of the higher-range UPS players present on the market (such as MGE, Socomec, Liebert/Emerson, Powerware/Eaton, Chloride) actually outsource large parts of the production of UPS devices under 3 kVA from the same Asian producers and sell them under their brand.

devices can be observed in the past years<sup>20</sup>, it seems that some distributors offer to the final consumer both the higher priced branded products as well as the lower priced commodity products, to address different end-consumer segments.

*The merging parties are active in the same distribution channels*

- (41) The market investigation further confirmed that one of the main barriers to expansion in the market of UPS devices below 3 kVA is the access to and management of distribution channels. The devices of below 3 kVA are to a large extent channelled via wholesalers, which are mostly specialized IT wholesalers (distributing a range of various IT equipment) and, to a much lesser extent, electrical wholesalers (specialized in different electrical distribution components and devices). The market investigation revealed that the wholesalers seem to have rather long-term relationships<sup>21</sup> with UPS suppliers and that they are often supported by significant sales and marketing campaigns organised by the suppliers and by their technical assistance. For customers, switching to other suppliers would on average take at least 6 months to 1 year and the customers showed reluctance to switching due to the established brand awareness of the products supplied and to additional costs related to training of personnel. The market investigation indicates that, in particular, APC, but also MGE, both have a very well developed distribution channel management.
- (42) One of the main arguments of the notifying party supporting the claim that APC and MGE are not close competitors is that the two companies use different distribution channels in the low-UPS segments: APC being traditionally strong within the IT channel and MGE, due to its historical links with Schneider, in the electronic technology ("ET") channel. However, the market investigation and also the information provided by the parties indicate that IT wholesalers are by far the most important channel in this segment, and that the majority of MGE's low-UPS sales<sup>22</sup> are effectuated through this channel. Indeed, both MGE and APC are selling their UPS products under 3 kVA to the same two most important IT wholesalers in Europe, Ingram and Techdata<sup>23</sup>.

*Significant barriers to entry / expansion*

- (43) As stated above, contrary to the notifying party's contentions, APC and MGE are indeed closely competing brands in the below 3 kVA UPS segment, and they do use to a large extent the same distribution channels<sup>24</sup>. Although the notifying party argues that the main competitors would have sufficient capacities to increase their

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<sup>20</sup> As confirmed by the parties' price lists and a third party study (Frost and Sullivan).

<sup>21</sup> A significant number of customers replied that they have 2 years supply contracts.

<sup>22</sup> According to the parties' own estimates and calculations on the basis of the parties' sales figures, roughly [more than 50 ] % of MGE's sales of UPS under 3 kVA are channelled via IT wholesalers, the remaining [...] being roughly equally split between direct sales and ET wholesalers. APC channels more than 80% of its low-range UPS via IT wholesalers.

<sup>23</sup> These two IT distributors have a pan-European presence, as opposed to the most of the other IT distributors which are only present in one or a few neighbouring EEA countries.

<sup>24</sup> In fact, for 0-3kVA UPS devices, the vast majority of sales are made through IT wholesalers.

production to counter price increases by the parties, it appears that access to distribution channels, together with branding, are key elements to be able to compete in this segment and constitute significant barriers to entry in this market. By contrast, production of small UPS is generally outsourced to Asian manufacturers. The transaction would combine Schneider's already strong MGE brand with the by-far leading APC brand.

*Situation at the national level*

- (44) As already indicated above, it cannot be excluded that the markets are national in scope. At the national level the new entity would reach particularly high market shares (above 40%) in the segment of UPS with a power range of 0-3 kVA in a large number of countries, as can be seen from the following table:

2005	MGE	APC	COMBINED	Competitor 1	Competitor 2	Market Size (Million EUR)
EEA	[10-20]%	[20-30]%	<b>[40-50]%</b>	[5-10]%(Riello)	[0-5]%(Powerware)	[400-450]
Austria	[5-10]%	[30-40]%	<b>[35-45]%</b>	[5-10]%(Riello)	[5-10]%(Powerware)	[5-10]
Belgium	[20-30]%	[20-30]%	<b>[50-60]%</b>	[5-10]%(Choloride)	[0-5]%(Riello)	[10-15]
Czech Rep	[0-5]%	[60-70]%	<b>[60-70]%</b>	[0-5]%(Powerware)	[0-5]%(Liebert)	[5-10]
Denmark	[5-10]%	[50-60]%	<b>[60-70]%</b>	[5-10]%(Powerware)	[5-10]%(Riello)	[5-10]
Finland	[0-5]%	[50-60]%	<b>[50-60]%</b>	[10-20]%(Riello)	[5-10]%(Powerware)	[0-5]
France	[30-40]%	[20-30]%	<b>[60-70]%</b>	[5-10]%(Socomec)	[5-10]%(Liebert)	[55-60]
Germany	[5-10]%	[30-40]%	<b>[40-50]%</b>	[10-20]%(Online)	[0-5]%(Choride)	[65-70]
Greece	[30-40]%	[30-40]%	<b>[70-80]%</b>	[5-10]%(Socomec)	[5-10]%(Liebert)	[0-5]
Hungary	[0-5]%	[40-50]%	<b>[50-60]%</b>	[0-5]%(Powerware)	[0-5]%(Liebert)	[5-10]
Ireland	[0-5]%	[10-20%]	<b>[20-30]%</b>	[10-20]%(Powerware)	[5-10]%(Liebert)	[5-10]
Italy	[0-5]%	[20-30]%	<b>[30-40]%</b>	[10-20]%(Riello)	[5-10]%(Socomec)	[55-60]
Latvia	[10-20]%	[50-60]%	<b>[60-70]%</b>	[0-5]%(Powerware)	[0-5]%(Liebert)	[0-5]
Lithuania	[10-20]%	[80-90]%	<b>[90-100]%</b>	[0-5]%(Powerware)	[0-5]%(Liebert)	[0-5]
Netherlands	[10-20]%	[50-60]%	<b>[60-70]%</b>	[5-10]%(Choloride)	[5-10]%(Riello)	[10-15]
Norway	[30-40]%	[20-30]%	<b>[60-70]%</b>	[10-20]%(Riello)	[10-20]%(Powerware)	[5-10]
Poland	[0-5]%	[60-70]%	<b>[60-70]%</b>	[0-5]%(Powerware)	[0-5]%(Liebert)	[10-15]
Portugal	[10-20]%	[40-50]%	<b>[50-60]%</b>	[5-10]%(Riello)	[5-10]%(Salicru)	[5-10]
Slovenia	[5-10]%	[40-50]%	<b>[50-60]%</b>	[0-5]%(Powerware)	[0-5]%(Liebert)	[0-5]
Slovakia	[5-10]%	[70-80]%	<b>[80-90]%</b>	[0-5]%(Powerware)	[0-5]%(Liebert)	[0-5]
Spain	[20-30]%	[10-20]%	<b>[40-50]%</b>	[5-10]%(Salicru)	[0-5]%(Socomec)	[35-40]
Sweden	[0-5]%	[20-30]%	<b>[20-30]%</b>	[10-20]%(Riello)	[5-10]%(Powerware)	[10-15]
UK	[5-10]%	[20-30]%	<b>[30-40]%</b>	[10-20]%(Powerware)	[5-10]%(Liebert)	[85-90]

*Source: estimates of the parties*

- (45) The arguments put forward above concerning the situation at the European level—the closeness of APC and MGE on the market, and the difficulty to expand for competitors and therefore to effectively defeat any attempt from the new entity to increase prices—remain valid at the national level. Given the overlaps brought about by the new transaction and the market position of the new entity (e.g. on the

large markets such as France, Germany, and Spain), the Commission has serious doubts about the compatibility of the proposed transaction with the Common market on the market for 0-3kVA Ups devices even if they are defined as national in scope.

*Conclusion*

- (46) Based on the parties high combined market share, the large increment both at EEA level and in several Member States, their strong and closely competing brands and their strong position in the main distribution channels, the lack of powerful competitors on the market, the transaction is likely to lead to the creation of a dominant position, and in any case, to significantly impede effective competition. Thus, it raises serious doubts as to its compatibility with the Common Market.

***B. UPS below 10 kVA***

- (47) The competitive assessment for the segment of UPS below 10 kVA is similar to the one for the segment below 3 kVA, since the vast majority of sales of the parties in the segment below 10 kVA [more than 50] % concern the segment below 3 kVA, and the competitive landscape is almost the same, with the combined Schneider/APC being the clear market leader and a number of other players with market shares between [0-10]%. Moreover, although ET distribution plays a larger role in the segment between 3 and 10 kVA than below 3 kVA, IT distribution is still the most important channel. The combined entity has considerably high market shares at the EEA level as well as the national level in the segment below 10 kVA. The EEA-wide market figures, based on parties' own estimates, are illustrated below (market size in 2005: EUR [550-600] million):

	Market share (%)
MGE	[10-20]%
APC	[20-30]%
<b>COMBINED</b>	<b>[40-50]%</b>
Riello	[5-10]%
Powerware/Eaton	[5-10]%
Socomec	[5-10]%
Chloride	[5-10]%
Liebert/Emerson	[0-5]%
Salicru	[0-5]%
GE	[0-5]%
AEG	[0-5]%
Piller	[0-5]%
Others	[20-30]%

*Source: parties' estimates*

- (48) On the national level, and similarly to the situation on the 0-3kVA, the new entity would hold combined market shares in the segment below 10 kVA exceeding 40% in a number of countries, as well as in a considerable number of smaller markets.<sup>25</sup> The arguments put forward for the 0-3kVA remain valid for these countries.
- (49) Therefore, under a market definition that would encompass all UPS devices from 0-10kVA, the proposed transaction would still be likely to lead to the creation of a dominant position and in any case significantly impede effective competition both at the national and EEA levels. Thus, it raises serious doubts as regards its compatibility with the Common market.

### ***C. Markets of UPS above 10 kVA***

- (50) As regards the area of high power UPS (above 10 kVA), the parties have a combined market share of [20-30]% with an overlap of [0-5]% at EEA level. The market shares of the parties and their main competitors at EEA level (market size in 2005: EUR [400-450] million) are shown in the following table (figures are based on parties' own estimates):

	Market share (2005)
MGE	[10-20]%
APC	[5-10]%
<b>COMBINED</b>	<b>[20-30]%</b>
Socomec	[10-20]%
Chloride	[10-20]%
Riello	[5-10]%
Powerware/Eaton	[5-10]%
Liebert/Emerson	[5-10]%
AEG	[5-10]%
GE	[5-10]%
Piller	[5-10]%
Newave	[0-5]%
Salicru	[0-5]%
Others	[10-20]%

*Source: parties' estimates*

<sup>25</sup> The parties' combined market shares in the segment below 10 kVA UPSs exceed 40 % in the following countries: Czech Republic [50-60]%, Denmark [60-70]%, Finland [40-50]%, France [50-60]%, Germany [40-50]%, Greece [60-70]%, Hungary [40-50]%, Latvia [50-60]%, Lithuania [70-80]%, Netherlands [50-60]%, Norway [50-60]%, Poland [50-60]%, Portugal [40-50]%, Slovenia [40-50]%, Slovak Republic [70-80]%, and Spain [40-50]%.

- (51) The figures indicate that the parties are not as strong in this product market as in the segments below 10 kVA or below 3 kVA. Despite the fact that the merger would create a leading player in the high power segment, the new entity, even if the markets were to be regarded as national, would still face important competition.

*No elimination of a material competitive force*

- (52) The market investigation has confirmed that APC, despite growing market shares, is not a highly competitive player on the market for UPS above 10 kVA. It has been confirmed that APC's business focuses on low power UPS devices and that the company has not been able to adapt its business model, which seems to be very much based on managing distribution channels and building brand recognition, to the high power market. Despite the fact that APC offers an innovative infrastructure solution, consisting of a rack, into which a UPS and other devices, such as a cooling system and/or a power distribution system can be integrated, it has not been able to attract the technically sophisticated high power UPS customers such as electrical contractors, system integrators and end users to the extent expected in the industry when APC entered this market.<sup>26</sup> Moreover, the market investigation revealed that there are competitors which are about to develop a similar solution and others which have not yet done so, but feel that they could fairly easily develop it by partnering with other companies, for example manufacturers of server racks. As a result, there are strong indications that APC has not been able to exert a specific competitive pressure on the market for UPS above 10 kVA.

*Presence of numerous well-positioned competitors*

- (53) Furthermore, the market investigation has confirmed that even after the proposed merger there will be a number of players which are in a good position to exercise countervailing competitive power vis-à-vis the merged entity. These competitors, such as Chloride (Masterguard), Liebert/Emerson, Powerware/Eaton, Riello, Socomec, AEG, Piller and GE, are active throughout the EEA.

*No competition concerns at the national level*

- (54) At the national level, a number of national markets would be affected: Belgium (Schneider: [20-30]%; APC: [0-5]%), the Czech Republic (Schneider: [0-5]%; APC: [20-30]%), Denmark (Schneider: [10-20]%; APC: [10-20]%), Finland (Schneider: [5-10]%; APC: [5-10]%), France (Schneider: [40-50]%; APC: [0-5]%),

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<sup>26</sup> In fact, the infrastructure solution seems to work quite well as a marketing tool if the buying decision for the UPS is taken by the IT department of a company, but it doesn't seem to be a major driver if the decision is taken by another department.



Greece (Schneider: [30-40]%; APC: [5-10]%), Latvia (Schneider: [30-40] %; APC: [5-10]%), the Netherlands (Schneider: [20-30]%%; APC: [10-20]%), Norway (Schneider: [30-40]%; APC: [0-5]%), Poland (Schneider: [10-20]%; APC: [5-10]%), Portugal (Schneider: [30-40]%; APC: [5-10]%), the Slovak Republic (Schneider: [5-10]%; APC: [10-20]%), Spain (Schneider: [20-30]%; APC: [0-5]%).

- (55) As regards the French and Greek markets, they are the only national markets where the combined entity would have a combined market share amounting to or exceeding 40%.<sup>27</sup> However, the market investigation has demonstrated that there are no considerable competition concerns on this product market. As regards France, the overlap of the parties is minimal - it amounts to [0-5]%. Thus, the transaction could hardly have any impact on the competitive structure in France. Moreover, the market investigation revealed that the French high power market seems to be quite particular in the sense that two companies – Schneider/MGE and Socomec ([20-30]%), another French company – are engaged in a constant price. Moreover, a third actor, Chloride, has a sizeable market share. In Greece, the situation is similar since the new entity will face the competition again of Socomec ([20-30]%), but also of GE ([10-20]%), and Liebert ([10-20]%). Moreover, as mentioned above, the strength of APC on this segment is still limited and therefore APC is not exerting a strong competitive constraint on Schneider.
- (56) In Denmark, the new entity would have [30-40]% market share but would still face the constraint from Powerware ([20-30]%), GE ([10-20]%), and Riello ([10-20]%). Moreover, as stated above, the market investigation showed that APC and Schneider are not close substitutes on the market for >10kVA UPS systems, and the merger does therefore not amount to the removal of a close competitor to APC. Similar arguments lead to dismiss competition concerns on the Dutch markets, where the new entity will still face the competition from Chloride ([10-20]%) and Socomec ([5-10]%). This holds true for the Latvian, the Portuguese, and the Norwegian markets, where strong competitors are also active. It also has to be noted that no specific competition issue with respect to the Danish, Dutch, Latvian, Norwegian, and Portuguese markets were raised by customers during the market investigation.
- (57) As for the other national markets, the merger does not bring about significant changes as the market position of the parties does not exceed 30% with limited overlaps.

### *Conclusion*

- (58) For these reasons, the proposed transaction is unlikely to lead to a significant impediment to competition in particular as a result of the creation or the

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<sup>27</sup> The parties have market shares of [40-50]% (Schneider) and [0-5]% (APC) in France, i.e. a combined market share of [40-50]%.

strengthening of a dominant position in the market(s) of UPS devices above 10kVA.

#### Vertical issues

- (59) The upstream markets for MCBs, MCCBs, LVSs, LVICs, TLV-LVs, and MFs would be affected since APC has a market share greater than 25% on the market for UPS below 3kVA, as well as on the market for UPS below 10kVA, both at the EEA and national levels. However, the merger is very unlikely to bring about foreclosure effects.
- (60) As regards risks related to input foreclosure, it has to be examined whether Schneider could use its position on the upstream markets to foreclose competitors of APC on the markets for UPS devices below 3/10kVA. In particular, since many manufacturers of UPS devices have their production facilities or outsource their production in Asia, Schneider would have to implement foreclosure at the worldwide level. However, this is very unlikely as its market share appears too limited to be able to carry out such a policy (at the world-wide level: MCBs: [20-30]%; MCCBs: [20-30]%; LVSs: [10-20]%; LVICs: [20-30]%; TLV-LVs: [0-5]%; MFs: [5-10]%<sup>28</sup>).; As regards the specific markets for MCBs and MCCBs, there are other important producers on the market, such as Siemens, GE, Legrand, Hager and ABB, which can supply competitors of the new entity on the markets for UPS devices.
- (61) In terms of customer foreclosure, it has to be noted that the supply of MCBs, MCCBs, LVSs, LVICs, TLV-LVs, and MFs to UPS manufacturers amounts to a minimal share of the total sales of these products (at the EEA-level: MCB: [<1]%; MCCB: [<1]%; LVS: [<2]%; LVIC: [<1]%; TLV-LV: [<1]%; MF: [<1]%). Thus, even if APC started to source these components exclusively from Schneider, it would have very limited effect on the turnover of manufacturers of these components, making customer foreclosure very unlikely.
- (62) Finally, no competition issue related to input or customer foreclosure was raised in the course of the market investigation.
- (63) For these reasons, the proposed transaction does not raise serious doubts on the upstream markets for MCBs, MCCBs, LVSs, LVICs, TLV-LVs, and MFs.

#### IV. COMMITMENTS SUBMITTED BY THE NOTIFYING PARTY

##### **(a) Procedure**

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<sup>28</sup> At the EEA level, market shares are MCBs: [20-30]%; MCCBs: [30-40]%; LVSs: [20-30]%; LVICs: [20-30]%; TLV-LVs: [0-5]%; MFs: [5-10]%.

(64) In order to render the concentration compatible with the common market, the notifying party has offered some commitments pursuant to Article 6(2) of the EC Merger Regulation, which are annexed to this Decision. A first commitment package was proposed by Schneider Electric on 18 January 2007. After examination and market testing of this commitment package, the notifying party amended the latter submitted on 2 February 2007 its final Commitments, which were deemed suitable to remedy the competition concerns identified. These commitments are attached to this decision and form an integral part thereof.

**(b) Description of the commitments**

(65) The notifying party's commitments consist in divesting the UPS business of MGE related to UPS devices below 10kVA, in particular:

- a management structure at worldwide level, [...];
- at worldwide level, the transfer of all the customer base ([...] customers at EEA level), including the relationships with distributors, agents and customers, as well as marketing collaterals (product brochures, product specifications and marketing supports) related to UPS of 0-10 kVA and surge suppressors;
- at worldwide level, the transfer of the existing sales forces dedicated to the sale of UPS of 0-10 kVA and surge suppressors;
- the related administrative and after-sales functions (either in the form of a provisional or definitive transfer or through a "service agreement");
- the assignment of the Pulsar brand and other related brands (Ellipse, Evolution, Nova and Comet) used for the sale of UPS of 0-10 kVA and surge suppressors (Eclipse);
- a royalty-free license on the MGE Office Protection Systems brand to the Purchaser for a temporary period of five years from Closing in relation with the manufacturing and sale of UPS of 0-10 kVA and surge suppressors on a worldwide level;
- the commitment from Schneider not to use the MGE brand for UPS of 0-10 kVA and surge suppressors for a ten-year period from Closing;
- as an option, should it be requested by the Purchaser, provided however that the Purchaser is not a company belonging or otherwise related to one of the five following industrial groups: Emerson (Liebert), Eaton (Powerware), Chloride, Socomec and Riello, the assignment of the MGE Office Protection Systems brand exclusively for use in connection with the manufacturing and sale of 0-10 kVA UPS and surge suppressors, on a worldwide level. Any payments by the purchaser in connection with the brand shall be up-front, i.e., there shall be no royalties, or payments similar to a royalty, post-acquisition.
- all other existing IP rights necessary to operate the business will also be licensed to the Purchaser

- MGE's shareholding in the joint venture UPE formed with the Taiwanese company [...] and dedicated to the manufacturing of UPS of 0-3 kVA, including the related R&D resources integrated within the joint venture;
  - the supply agreement with the Taiwanese company [...] for the procurement of some 0-3 kVA UPS products not manufactured by the joint venture UPE;
  - the supply agreement with the Taiwanese company [...] for UPS of 3-10 kVA;
  - the supply of surge suppressors by the Chinese company [...];
- (66) Upon the Commission's agreement, the acquirer may also acquire part of the assets and key personal listed above.

**(c) Suitability for removing the serious doubts**

- (67) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
- (68) Under the proposed undertakings, Schneider would divest all its current activities in the 0-10kVA segment. Thus, the overlaps on the 0-3kVA market and 0-10kVA market, where serious doubts have been identified, would be removed, and the new entity's market position would be that of APC ([30-40] % on the EEA market for 0-3kVA UPS devices, and [20-30]% on the EEA market for 0-10kVA UPS devices) after the implementation of the proposed transaction.
- (69) The Commission has analyzed and market tested the remedies in view of ensuring that, regardless of the acquirer, the divested business is a viable stand-alone business capable to exert, post-merger, a competitive pressure on the new entity comparable to that of Schneider/MGE on APC pre-merger. While limited concerns were overall raised in the course of the market test by customers, competitors and several customers have nevertheless explained that the commitments should include provisions regarding the brand MGE, given that it is an important factor of success on the 0-3kVA/0-10kVA markets.

*Customer base and access to distribution*

- (70) The Commission examined whether the transfer of all the customer base related to UPS of 0-10kVA (and surge suppressors) was a sufficient starting point to create a viable competitor, in view of the fact that customers can easily change supplier. In this respect, the market test has shown that Schneider/MGE based its success by building customer trust based on long-established contacts between Schneider's salesforce and its customers. Since the proposed remedies precisely include the divestiture of Schneider's salesforce, it provides the divested business with the contacts and the type of access to distributors that makes unlikely a quick exodus of

customers to another brand (and in particular to that of the new entity). Furthermore, the commitments comprise the divestment of after-sales functions, which ensures the link between the divested business and MGE's current customers of 0-10kVA UPS devices. Thus, the commitments gives the divested business a sustainable customer base that it can avail to establish a reputation of a credible supplier and competitor.

### *Brand*

- (71) The market test has shown that the brand MGE is an important competition factor, and that MGE is the second brand on the 0-10kVA segment behind APC. This raised therefore the question of the actual ability of the divested business acquirer to compete effectively with no right to use the MGE brand.
- (72) To address this issue, the notifying party committed to offer to the purchaser a royalty-free licensing of the brand MGE for the 0-10kVA segment for a period of 5 years. The market test has confirmed that a purchaser of the divested business may need several years to educate consumers and smoothly change the brand MGE on its products without incurring an important loss of customers. In particular, a period of co-branding was deemed necessary, even if it can require important investment in marketing—however, this expected investment would be taken into account by interested acquirers in their bids, the price of the divested business will be discounted accordingly, and therefore, the ultimate bearer of this cost will be Schneider. This temporary co-branding strategy would in particular make sense for an actor with a strong brand on the market such as the main marketers of UPS devices (Emerson, Eaton, Chloride, Socomec, and Riello). Furthermore, Schneider would not use the brand MGE on the 0-10kVA segment for a period of ten years, which gives again enough time to educate consumers and makes confusion unlikely.
- (73) However, as the acquirer of the divested business is not known yet, there is no guarantee that this acquirer will be a competitor with a strong brand or even a complete newcomer, such as a financial investor. As a competitor explained in the market test, *“the company that purchases the divestment package will have to spend much of their money on brand building. (...) Now you will have a potentially totally unknown brand having to spend large amounts of money to compete. It will lessen their ability to be successful.”*<sup>29</sup> In order to address this, the notifying party has therefore accepted to commit to offer selling the brand MGE for the 0-10kVA segment, should the acquirer be a small market player or a newcomer.
- (74) If such a scenario occurred, the MGE brand would be owned on a worldwide level respectively by the acquirer of the divested package for the 0-10kVA segment and by Schneider for the above 10kVA segment. The acquirer would therefore be able

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<sup>29</sup> Market test of the proposed remedies for competitors, question (4) on the effectiveness of the remedy.

to compete effectively since it would own the strong brand MGE for its products on a permanent and worldwide basis.

- (75) This would be possible without incurring the risk of creating confusion on the market due to this apparent split of the brand MGE. Indeed, the two companies (the acquirer and Schneider) would compete on distinct markets (respectively 0-10kVA and above 10kVA) and in particular, their customers would be different. As already explained, customers on the 0-10kVA segment are in their vast majority wholesalers, whereas customers on the above 10kVA market are end-users, contractors, and system integrators. Furthermore, given that Schneider will retain most of the MGE business (about 80% of MGE's sales are sales of UPSs above 10kVA), it will have no economic incentive to create a confusion on the market that could harm its own sales and reputation. In addition, the product brands (or trademarks) such as Pulsar will also be divested and Schneider will no longer be allowed to use them for UPS devices above 10kVA. This significantly decreases the risk of confusion as a competitor commented in its response to the market test: *“the product brands would be critical to the success of the acquirer due to overall channel and customer awareness. In our opinion, these product brands should not be available to [Schneider] to be used for higher kVA offerings. This would only confuse the channel and end users.”*<sup>30</sup>

#### *Price and Quality*

- (76) Besides its relations to distributors and recognized brand, Schneider's strength on the segment for 0-10kVA has relied on its ability to offer products of quality while being price aggressive. As one customer put it, “Schneider animates the competition on the market”, and the scope of the proposed commitments makes it likely that the divested business will be able to take on such a role. Indeed, it would take over the full industrial organization of Schneider's 0-10kVA business unit (the current production agreement with the Taiwanese company [...] (for the 0-3kVA segment) and the supply agreements with the companies [...] and [...] (respectively for the 0-3kVA and 3-10kVA segments)) including the R&D facilities and personnel, so that the divested business would keep expertise in product development.
- (77) It also has to be noted that a road map of new product introduction for the next three years has already been set up, so that the acquirer will very quickly be able to introduce new products. This increases again the viability of the divested business.

#### *Potential Purchasers*

- (78) The design of the commitment package ensures that the acquirer can be a company already manufacturing UPS devices, in particular a company active on the above 10kVA segment willing to expand on the 0-10kVA segment—as suggested by

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<sup>30</sup> Market test of the proposed remedies for competitors, question (4) on the effectiveness of the remedy.

competitors and customers—or a financial investor, such as a private equity fund. In this respect, it has to be recalled that MGE was previously owned by financial investors and its management as it underwent a leverage-buyout in 1996 until the company was taken over by Schneider in 2004. Thus, the package has been designed to leave the door open for the acquisition of the divestment business by a financial investor: in addition to the brand MGE, such an investor would also have the option to benefit from the expertise of some MGE's current managers.

- (79) Regarding the attractiveness of the divested business, figures provided by the notifying party shows that it is profitable (with a stable operation margin amounting to [10-20] %) and several competitors explicitly expressed their interest in potentially acquiring it in their reply to the market test of the commitments.

**(d) Conclusion on the commitments**

- (80) The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the Common Market and the EEA, which have been established in the previous sections of this Decision.

**V. CONDITIONS AND OBLIGATIONS**

- (81) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
- (82) The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (83) In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with Sections B to G of the Commitments submitted by the notifying party on 02/02/2007.
- (84) The remaining requirements set out in the other Sections of the Commitments submitted by the parties on 02/02/2007 are considered to constitute obligations.

## VI. OVERALL CONCLUSION

- (85) 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 pursuant to Article 2(2) of Council Regulation (EC) No 139/2004, subject to full compliance with the commitments as described in paragraph (65) and the related text in the Commitments annexed to this Decision that forms an integral part to this decision.
- (86) Consequently, 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) and Article 6(2) of Council Regulation (EC) No 139/2004.



HAS ADOPTED THIS DECISION:

*Article 1*

The notified operation whereby Schneider Electric would acquire sole control of APC is hereby declared compatible with the common market and with the functioning of the EEA Agreement.

*Article 2*

Article 1 is subject to full compliance with the conditions set out in Sections B to G of the Commitments submitted by the parties on February 2, 2007, contained in the Annex.

*Article 3*

This Decision is addressed to:

**Schneider Electric**

43-45 boulevard Franklin Roosevelt

F-92504 Rueil-Malmaison

France

Done in Brussels, 08/02/2007

For the Commission,  
signed  
Neelie KROES  
Member of the Commission

**By hand**  
European Commission  
DG Competition  
Rue Joseph II 70  
B-1000 BRUXELLES

## **CASE COMP/M.4475 – SCHNEIDER ELECTRIC / AMERICAN POWER CONVERSION (APC)**

### **DIVESTITURE COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2), of Council Regulation (EEC) No 139/2004 (the “**Merger Regulation**”), Schneider Electric SA (hereafter “**Schneider**”) hereby provides the following commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of the sole control of American Power Conversion Corporation (hereafter “**APC**”) by Schneider (together with APC the “**Parties**”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption by the Commission of the Decision, provided that if completion of the Notified Concentration does not subsequently take place for any reason and is hereby abandoned, the Notifying Party shall not be bound by these Commitments.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

#### **Section A. - Definitions**

For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

**Closing:** the transfer of the legal title of the Divestment Business to the Purchaser.

**Divestment Business:** the business or businesses, as defined in Section B and the attached Schedules, that Schneider commits to divest.

**Divestiture Trustee:** one or more natural or legal person(s), independent from the Parties, who is(are) approved by the Commission and appointed by Schneider and who has(have) received from Schneider the exclusive Trustee Mandate to sell the Divestment Business at no minimum price.

**Effective Date:** the date of the adoption of the Decision by the European Commission.

**First Divestiture Period:** the period of [...] from the Effective Date.

**Hold Separate Manager:** the person appointed by Schneider for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedules.

**MGE:** MGE UPS Systems S.A., Schneider's subsidiary, active in the uninterruptible power supply sector. MGE is a *société par actions simplifiée*, incorporated under French law, with its registered office at ZIRST Montbonnot Saint Martin, 140, avenue Jean Kuntzmann, 38334 Saint Ismier CEDEX and registered with RCS Grenoble under number B 302 636 303.

**Monitoring Trustee:** one or more natural or legal person(s), independent from the Parties, who is(are) approved by the Commission and appointed by Schneider, and who has(have) the duty to monitor Schneider's compliance with the conditions and obligations attached to the Decision.

**Parties:** Schneider and APC.

**Personnel:** the personnel necessary for the proper and continuous operation of the Divestment Business. In case of doubt, the notion of "necessary for the proper and continuous operation of the Divestment Business" will be defined by the Commission in consultation with Schneider and the Trustee.

**Purchaser:** the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

**Trustee(s):** the Monitoring Trustee and the Divestiture Trustee.

**Trustee Divestiture Period:** the period of [...] from the end of the First Divestiture Period.

## Section B. The Divestment Business

### Commitment to divest

1. In order to restore effective competition, Schneider commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, Schneider commits to find a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Schneider has not entered into such agreement at the end of the First Divestiture Period, Schneider shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. Schneider shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Schneider has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding three months after the approval of the Purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, Schneider shall, for a period of [...] after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

### Structure and definition of the Divestment Business

4. The Divestment Business consists of MGE's branch of activity of UPS of 0-10 kVA and surge suppressors.

The Divestment Business, as described in more details in the introductory general undertakings and in the Schedules attached herein, includes:

- (a) the existing tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
- (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
- (c) all contracts, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a) – (c) hereinafter collectively referred to as “**Assets**”); and

- (d) all the Personnel necessary to operate the business.

## **Section C. Related commitments**

### Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Schneider shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Schneider undertakes:
- (a) not to carry out any act upon their own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
- (b) to make available sufficient resources for the development of the Divestment Business on the basis and continuation of the existing business plans ;
- (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

### Hold-separate obligations of Parties

6. The Parties commit, from the Effective Day until Closing, to keep the Divestment Business separate from the businesses the Parties are retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. The Parties shall also ensure that the Personnel does not report to any individual outside the Divestment Business.
7. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as distinct and saleable entity separate from the businesses retained by the Parties. Schneider shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

### Ring-fencing

8. The Parties shall implement all necessary measures to ensure that they do not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Schneider may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Schneider is required by law.

#### Non-solicitation clause

9. Schneider undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

#### Due Diligence

10. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Schneider shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
  - (a) provide to potential purchasers sufficient information as regards the Divestment Business;
  - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

#### Reporting

11. Schneider shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
12. Schneider shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

### **Section D. The Purchaser**

13. In order to ensure the immediate restoration of effective competition, the Purchaser in order to be approved by the Commission, must:
  - (a) be independent of and unconnected to the Parties;

(b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as viable and active competitive force in competition with the Parties and other competitors;

(c) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “**Purchaser Requirements**”).

14. The final binding sale and purchase agreement or agreements and all ancillary agreements shall be conditional on the Commission’s approval. When Schneider has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Schneider must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

## **Section E. Trustee**

### **I. Appointment Procedure**

15. Schneider shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Schneider has not entered into a binding sale and purchase agreement for the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Schneider at that time or thereafter, Schneider shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
16. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Schneider in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

*Proposal by Schneider*

17. No later than one week after the Effective Date, Schneider shall submit a list of one or more persons whom Schneider proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Schneider shall submit a list of one or more persons whom Schneider proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 16 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
  - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
  - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

*Approval or rejection by the Commission*

18. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Schneider shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Schneider shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by Schneider*

19. If all the proposed Trustees are rejected, Schneider shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 15 and 18.

*Trustee nominated by the Commission*

20. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Schneider shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee



21. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Schneider, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

22. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
- (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Schneider with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
  - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the businesses retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;
  - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
  - (c) (i) in consultation with Schneider, determine all necessary measures to ensure that Schneider does not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Schneider as the disclosure is reasonably necessary to allow Schneider to carry out the divestiture or as the disclosure is required by law;
  - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Schneider or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to Schneider such measures as the Monitoring Trustee considers necessary to ensure Schneider's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the

holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;

(vi) provide to the Commission, sending Schneider a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the businesses are held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Schneider a non-confidential copy at the same time, if it concludes on reasonable grounds that Schneider is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 14, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

*Duties and obligations of the Divestiture Trustee*

23. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at the best possible price and other terms, with no minimum price, the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser(s) and the final binding sale and purchase agreement(s) in accordance with the procedure laid down in paragraph 14. The Divestiture Trustee shall include in the sale and purchase agreement(s) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement(s) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Schneider, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
24. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports

shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

### III. Duties and obligations of Schneider

25. Schneider shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Schneider's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Schneider and the Divestment Business shall provide the Trustee upon request with copies of any document. Schneider and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
26. Schneider shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Schneider shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Schneider shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
27. Schneider shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Schneider shall cause the documents required for effecting the sale and the Closing to be duly executed.
28. Schneider shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Schneider for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
29. At the expense of Schneider, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Schneider's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and

obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Schneider refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard Schneider. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Schneider during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

#### IV. Replacement, discharge and reappointment of the Trustee

30. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
  - (a) the Commission may, after hearing the Trustee, require Schneider to replace the Trustee; or
  - (b) Schneider, with the prior approval of the Commission, may replace the Trustee.
31. If the Trustee is removed according to paragraph 30, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 15-20.
32. Beside the removal according to paragraph 30, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

#### **Section F: Future co-operation in providing information and data on the relevant market(s) of the Divested Businesses**

33. Schneider commits to provide, for a period of ten years after the Effective Date, on request by the Commission (or third parties under contract by the Commission, respecting confidentiality obligations) information and data pertaining to the operations of the retained business as well as on the relevant markets of the Divested Business in a sufficient level of detail to allow the Commission to carry out an ex-post analysis on the effectiveness of the divestiture to resolve any competition problems. All business secrets conveyed to the Commission will be covered by the obligation of professional secrecy that the Commission is bound to by virtue of the EC Treaty and of the Merger Regulation.

#### **Section G. The Review Clause**

34. The Commission may, where appropriate, in response to a request from Schneider showing good cause and accompanied by a report from the Monitoring Trustee:

- (i) grant an extension of the time periods foreseen in the Commitments,
- or
- (ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Schneider seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Schneider be entitled to request an extension within the last month of any period.

Marc Pittie

Duly authorised for and on behalf of Schneider

Brussels, 2 February 2007

**SCHEDULES TO COMMITMENTS**  
**CASE COMP/M.4475 – Schneider Electric/APC**

**INTRODUCTORY GENERAL UNDERTAKINGS ON THE DIVESTMENT BUSINESS**  
**AND THE SHARED RESOURCES**  
**THAT WILL BE TRANSFERRED TO THE PURCHASER**

Following the Commission presentation of its market investigation's results, it is Schneider understanding that the Commission main concerns relate to the access to distribution and more particularly the IT distribution for the UPS of 0-3 kVA and possibly for the UPS of 3-10 kVA.

As explained by Schneider on several occasions, the MGE's current business organisation is consistent and fits perfectly well with the business market segments described in the Form CO and confirmed by the Commission following its market investigation.

Indeed, MGE's current business organisation consists of two "branches of activity", one for the UPS of 0-10 kVA (thus covering both the 0-3 kVA and the 3-10 kVA market segments) and the other for the UPS above 10 kVA.

As a result, the proposed Divestment Business consists of MGE's current entire 0-10 kVA business ("branch of activity") together with its entire surge suppressors business. That business will convey to the Purchaser, among others, MGE's current entire access to IT distributors.

In 2005, the Divestment Business accounts for approximately [50-100] MEUR at EEA level and [100-150] MEUR at worldwide level and is characterized by a high profitability ("EBIT") of approximately 1[10-20]%.

The Divestment Business comprises MGE's entire 0-10 kVA UPS business and in particular the following main elements:

- a management structure at worldwide level, [...];
- at worldwide level, the transfer of all the customer base ([...] customers at EEA level), including the relationships with distributors, agents and customers, as well as marketing collaterals (product brochures, product specifications and marketing supports) related to UPS of 0-10 kVA and surge suppressors;
- at worldwide level, the transfer of the existing sales forces dedicated to the sale of UPS of 0-10 kVA and surge suppressors;
- the related administrative and after-sales functions (either in the form of a provisional or definitive transfer or through a "service agreement"), knowing that Schneider is ready to reconsider the form and/or size thereof in a manner consistent with the Purchaser's needs in order to make the Divestment Business as attractive as possible for the Purchaser;
- the assignment of the Pulsar brand and other related brands (Ellipse, Evolution, Nova and Comet) used for the sale of UPS of 0-10 kVA and surge suppressors (Eclipse);
- a royalty-free license on the MGE Office Protection Systems brand to the Purchaser for a temporary period of five years from Closing in relation with the manufacturing and sale of UPS of 0-10 kVA and surge suppressors on a worldwide level;

- the commitment from Schneider not to use the MGE brand for UPS of 0-10 kVA and surge suppressors for a ten-year period from Closing;
- as an option, should it be requested by the Purchaser, provided however that the Purchaser is not a company belonging or otherwise related to one of the five following industrial groups: Emerson (Liebert), Eaton (Powerware), Chloride, Socomec and Riello, the assignment of the MGE Office Protection Systems brand exclusively for use in connection with the manufacturing and sale of 0-10 kVA UPS and surge suppressors, on a worldwide level. Any payments by the purchaser in connection with the brand shall be up-front, i.e., there shall be no royalties, or payments similar to a royalty, post-acquisition.
- all other existing IP rights necessary to operate the business will also be licensed to the Purchaser;
- MGE's shareholding in the joint venture UPE formed with the Taiwanese company [...] and dedicated to the manufacturing of UPS of 0-3 kVA, including the related R&D resources integrated within the joint venture;
- the supply agreement with the Taiwanese company [...] for the procurement of some 0-3 kVA UPS products not manufactured by the joint venture UPE;
- the supply agreement with the Taiwanese company [...] for UPS of 3-10 kVA;
- the supply of surge suppressors by the Chinese company [...];

[...]

The Divestment Business will be sold in any case to one single purchaser. The various tangible and intangible assets related to the Divestment Business are held in different entities of MGE. The sale to the Purchaser could be structured either as an asset sale, as a sale of a new legal entity or as a combination of both, as it may be agreed with the Purchaser.

The management structure and personnel that Schneider commits to divest, in addition to the personnel employed by the joint venture UPE, will include approximately [...] people, as summarized below.

### 1. Management structure

The management structure will be composed as follows.

	<b>Function</b>	<b>Location</b>	<b>Number</b>	
<b>Management structure</b>	<b>CEO</b>	[...]	[...]	
	<b>Finance and Information System</b>	[...]	[...]	
	<b>Manufacturing and Supply Chain</b>	[...]	[...]	
	<b>Sales and Marketing</b>	[...]	[...]	
	<b>R&amp;D</b>	[...]	[...]	
	<b>TOTAL</b>			[...] people



An organisational chart of the Divestment Business is provided in **Exhibit 4**.

**2. Sales forces, sales administration and marketing**

Sales forces at worldwide level will be composed as follows:

<b>Sales Force at EEA level</b>																
<b>Location</b>	France	Austria	Belgium	Finland	Germany	Greece	Hungary	Italy	NL	Norway	Poland	Portugal	Spain	Sweden	UK	<b>TOTAL</b>
<b>Function</b>	Sales, Sales Administration and Marketing															
<b>Number</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

<b>Sales Force in Asia (China, Hong Kong, Korea, Malaysia, Philippines, Singapore, Thailand and Indonesia)</b>	
<b>Function</b>	Sales, Sales Administration and Marketing
<b>Number</b>	[...]

<b>Sales Force in the rest of the world (Africa, Middle East, Australia, Americas, Russia)</b>	
<b>Function</b>	Sales, Sales Administration and Marketing
<b>Number</b>	[...]

The transferred employees will insure the continuity and viability of the Divestment Business, the possibility of expanding the business and the necessary know-how transfer to run the business. The Trustee, in consultation with the Commission and Schneider, may make adjustments to the scope and identities of personnel transferred to the Divestment Business as to ensure its viability.

Upon request of the Purchaser, the list of personnel may be reviewed and adapted in accordance with its own organization, management and personnel structure.

Schneider wants to underline that it has a moral responsibility towards the employees of the Divestment Business and is therefore morally committed to ensure a seamless and successful transfer of the Divestment Business to the Purchaser.

**SCHEDULE I**  
**UPS 0-10 KVA DIVESTMENT BUSINESS**

**I. INDUSTRIAL ORGANIZATION**

1. The Divestment Business, as operated to date, comprises *inter alia*:
  - MGE's shareholding in the joint venture UPE located in [...], in China, jointly held with the Taiwanese company [...];
  - the physical transfer to the joint venture UPE of two production lines of UPS of 0-3 kVA [...];
  - the transfer of the Purchase Agreement with the Taiwanese [...] for the procurement of some 0-3 kVA UPS products not manufactured by the joint venture UPE, [...]; and
  - the transfer of the Purchase Agreement with the Taiwanese [...] for the procurement of UPS of 3-10 kVA, [...]

**Shareholding in the joint venture UPE ("UPE")**

2. The joint venture UPE has been created in 1998 [...]
3. MGE holds 50% of UPE, [...].
4. UPE has a production capacity of [...] and an utilisation rate of [...].
5. UPE includes:
  - a. The following main tangible assets:

Surface Mount Technology (SMD) – Automatic Insertion Lines:

- [...]

Manual Insertion Lines:

- [...]

Test stations: [...]

UPS manufacturing lines:

- [...]

R&D Laboratory

- [...]

- b. The following main licenses, permits and authorisations:
- technology and know-how licenses necessary to the manufacturing of past and existing lines of 0-3 kVA UPS products;
  - permits and authorisations necessary to conduct the business as currently conducted.
- c. As the main object of UPE, the commitment to manufacture and supply products exclusively for MGE.
- d. The following personnel:

	<b>Function</b>	<b>Number of employees</b>
<b>UPE</b>	Manufacturing	[...]
	R&D	[...]
	Administration	[...]
	Management	[...]
	<b>Total</b>	[...]

- e. The following Key personnel

In addition to the existing management of UPE, the Divestment Business' management will also include a general management structure as described above.

**Physical transfer to UPE of two production lines** [...]

6. This comprises two ancillary manufacturing lines of a maximum production capacity of [...], with 5 manual assembly stations and 1 testing equipment for final products per line.
7. Those manufacturing lines will be transferred to UPE or to any other location, as required by the Purchaser.

**Transfer of the supply agreement with the Taiwanese company** [...]

8. The agreement between MGE and the Taiwanese company [...] relates to the supply of some specific UPS of 0-3 kVA ([...]).
9. [...]

**Transfer of the supply agreement with the Taiwanese company** [...]

10. The agreement between MGE and the Taiwanese company [...] relates to the supply of UPS of 3-10 kVA ([...]).

11. [...]

12. [...]

**II. CUSTOMER BASE AND MARKETING COLLATERALS**

13. All contracts and agreements between MGE and its distributors, agents and customers, which are relevant to the Divestment Business and which should enable the Purchaser to sell the UPS below 10 kVA in question will be transferred.

14. The following marketing collaterals will be transferred:

- product brochures;
- product specifications;
- historical databases related to the 0-10 kVA UPS business; and
- marketing and sales support tools.

**III. SALES FORCES, SALES ADMINISTRATION AND MARKETING**

15. A team of [...] at worldwide level, dedicated to the sale and marketing of UPS of 0-10 kVA, as previously described in the introductory general undertakings, will be transferred.

**IV. PULSAR BRAND AND OTHER RELATED BRANDS**

16. The Divestment Business also comprises the assignment of the following brands used for the sale of UPS of 0-10 kVA:

- Pulsar;
- Ellipse;
- Evolution;
- Nova; and
- Comet.

17. Since the Comet brand is also used for some UPS product lines above 10 kVA which are not part of the Divestment Business (Comet, Comet TM, Comet DX and Comet 3000), Schneider shall have a right strictly limited to UPS above 10 kVA to use the Comet brand for a reasonable period [...] from Closing, in order for Schneider to complete the migration of those Comet, Comet TM, Comet DX and Comet 3000 products to other brands.

**V. OTHER IP RIGHTS**

18. The Divestment Business also comprises a perpetual royalty-free license to use the patents, know-how and software rights necessary for the conduct of the Divestment Business, as currently conducted by MGE.

**SCHEDULE II**  
**SURGE SUPPRESSORS DIVESTMENT BUSINESS**

1. The Divestment Business comprises the transfer of the supply of surge suppressors by the company [...].

**I. SUPPLY**

2. Currently, MGE buys the surge suppressors from [...], by sending the necessary specifications to [...], which performs the orders, [...].

**II. CUSTOMER BASE AND MARKETING COLLATERALS**

3. All contracts and agreements between MGE and its distributors, agents and customers, which are relevant to the Divestment Business and which should enable the Purchaser to sell the surge suppressors in question will be transferred.
4. The marketing collaterals used so far by MGE for selling those surge suppressors will be transferred.

**III. SALES FORCE**

5. Sales of surge suppressors will be supported by the sales forces described above in the introductory general undertakings.

**IV. BRAND**

6. The Divestment Business also comprises the assignment of the Eclipse brand used for the sale of surge suppressors.



**SCHEDULE III**

**TEMPORARY BRAND LICENSE FOR THE  
MANUFACTURING AND SALE OF UPS OF 0-10 KVA  
AND SURGE SUPPRESSORS**

1. Schneider commits to offer to the Purchaser a license on the MGE Office Protection Systems brand (see below) for a temporary period of five years from Closing.



2. The brand license shall be an exclusive license for the manufacturing and sale of UPS of 0-10 kVA and surge suppressors.
3. The license shall be royalty- free.
4. The license shall be granted on a worldwide basis.
5. The license shall be granted for a temporary period of five years from Closing (“the license period”).
6. Schneider shall be prohibited from using any MGE brand or any similarly confusing brand for the manufacturing and sale of UPS of 0-10 kVA and surge suppressors on a worldwide level during a total period of ten years from Closing.
7. The Brand License shall not:
  - (a) grant any right of the Purchaser to use the MGE brand for other products than those which are specified in the Brand License Agreement;
  - (b) allow the Purchaser to attack any trademark of Schneider or any of its Affiliated Undertakings based on the MGE brand; and
  - (c) allow the Purchaser/Licensee to modify the MGE logo design, or damage the overall value of the MGE brand, or violate any necessary security norms and administrative permits and authorizations. Should Schneider realize that any of these events occur, it will immediately require from the Purchaser/Licensee by registered letter with acknowledgement of receipt to remedy this situation. Schneider will also inform the Trustee who will address the matter. Should Schneider and the Purchaser/Licensee disagree with the Trustee’s decision, they will refer the matter to an arbitration proceeding, which will rule on the matter expeditiously. The arbitration clause will be standard and expanded in the Brand License Agreement. The brand licensee may, however, for purposes of migrating products from the MGE brand to another brand, combine the MGE brand with this other brand for a maximum period of three years within the license period.

**SCHEDULE IV**

**OPTIONAL ASSIGNMENT OF THE MGE OFFICE  
PROTECTION SYSTEMS BRAND FOR THE  
MANUFACTURING AND SALE OF UPS OF 0-10 KVA  
AND SURGE SUPPRESSORS**

1. As an option, should it be requested by the Purchaser, provided however that the Purchaser is not a company belonging or otherwise related to one of the five following industrial groups: Emerson (Liebert), Eaton (Powerware), Chloride, Socomec and Riello, the assignment of the MGE Office Protection Systems brand (see below) exclusively for use in connection with the manufacturing and sale of 0-10 kVA UPS and surge suppressors, on a worldwide level. Any payments by the purchaser in connection with the brand shall be up-front, i.e., there shall be no royalties, or payments similar to a royalty, post-acquisition.

