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***Case No COMP/M.5755 -  
SCHNEIDER ELECTRIC  
/ AREVA T&D***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 26/03/2010

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## EUROPEAN COMMISSION

Brussels, 26.3.2010  
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

### **To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.5755 - SCHNEIDER ELECTRIC / AREVA T&D  
Notification of 22 February 2010 pursuant to Article 4 of Council  
Regulation No 139/2004<sup>1</sup>**

1. On 22/02/2010 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which Schneider Electric ("Schneider", France), acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation control of the distribution business of Areva T&D ("Areva", France), through a special purpose vehicle ("SPV") by way of purchase of shares.

#### **I. THE PARTIES**

2. Schneider, a company incorporated under French law, is the parent undertaking of an international group which is mainly active in the production and sale of products and systems in energy management.
3. Areva, a company incorporated under French law, is an international group active in the provision of products, systems and services that assist in the transmission and distribution of high and medium voltage electrical power.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

## **II. THE OPERATION**

4. Schneider and Alstom intend to acquire the share capital of Areva through an acquisition vehicle (the SPV). Following the acquisition and as agreed in the Consortium Agreement<sup>2</sup> between the parties, the SPV will divest almost all the Medium Voltage (MV) activities and business units to Schneider (hereafter the "Distribution business"). Alstom will ultimately retain the SPV within its corporate structure with the High Voltage (HV) activities, as well as three specific MV activities: [...]<sup>3</sup>
5. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
6. The activities of Areva now being sold to Schneider and Alstom were originally part of the Alstom group, which sold them in 2003 to Areva.

## **IV. UNION DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>4</sup> (Schneider EUR 18.6 billion, Areva EUR 1.5 billion). Each of them has a Union-wide turnover in excess of EUR 250 million (Schneider EUR [...] billion, Areva<sup>5</sup> EUR [...] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

## **V. ASSESSMENT**

### **A. PRODUCT AND GEOGRAPHIC MARKET DEFINITIONS**

#### **Relevant product markets**

8. The market for transmission and distribution (T&D) comprises a wide range of different components that are supplied individually or integrated into a system. The Commission has previously identified in the market for T&D equipment the following six segments: (i) High Voltage Products<sup>6</sup>, (ii) Medium Voltage (MV) Products<sup>7</sup>, (iii) Power Transformers, (iv) Transmission Systems and Distribution Systems, (v) Transmission and Distribution Services and (vi) Energy Automation and Information Systems.<sup>8</sup> However, in none of the previous decisions did the Commission come to a definitive conclusion on the definition of the relevant product markets in this area.
9. The transaction gives rise to horizontally affected markets in the segments of MV products and Energy Automation and Information Systems.

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<sup>2</sup> [...] In accordance with the Jurisdictional Notice, the intermediate holding of Areva by the Consortium is not a long lasting acquisition and does not have to be notified.

<sup>3</sup> [...]

<sup>4</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

<sup>5</sup> Turnover concerning Areva's distribution activities.

<sup>6</sup> For transmission networks operating at voltages between 52 kV and 800 kV.

<sup>7</sup> For distribution networks operating at voltages between 1 kV and 52 kV.

<sup>8</sup> Case COMP/M.3296 Areva/ALSTOM T&D, decision of 19 December 2003; Case COMP/M.3653 Siemens/VA Tech, decision of 13 July 2005.

*(i) Market for MV products*

10. MV products are used for distribution networks operating at voltages between 1 kV and 52 kV. In the notifying parties' view, no further distinction between different MV products is necessary. From a customer's perspective, two MV products may not be considered substitutable with each other, since each of the various MV products has its specific use and performs a specific function in the substation. However, customers, in general, do not tender for specific products, but for equipment or projects, so they expect suppliers to offer a complete range of MV products. In fact, according to the parties, all manufacturers have a wide offer of products that takes account of the different voltages. Therefore, for the parties, a distinction between each individual product would not only be irrelevant, but also would not reflect properly the economic reality of the MV activities.
11. Regarding customers, the parties submit that there are three main types of customers in the market for MV equipment: (i) utilities, (ii) large non-utilities customers (including industrial customers, large infrastructure sites and large contractors) and (iii) building owners as well as small and medium-sized industrial companies<sup>9</sup>. However, all the customers are supplied with a wide range of MV products<sup>10</sup>. In addition, almost all the sales ([75-85]%) in the market for MV equipment are made through structured tendering processes, regardless of the type of customer. Therefore, a further delineation of the market by type of customer would not be appropriate.
12. In any case, if a segmentation by customers were to be considered, the parties would not be close competitors as they are focused on different customer segments: (i) Schneider's sales to utilities represent [...] % of its total sales, while they represent about [...] % for Areva; (ii) large customers represent [...] % of Schneider's total sales, whereas for Areva they represent around [...] %, and (iii) Schneider's sales to building owners and small industrial customers are [...] % of its total sales and around [...] % for Areva.
13. In previous decisions, the Commission<sup>11</sup> has identified, within MV products, a variety of MV switching and branching, measurement and control and protection devices, including MV switchgears (which can be further divided into gas and air insulated switchgear), circuit breakers, disconnectors, lightning arresters, contactors, and distribution transformers, inter alia. However, the Commission finally left the market definition open.
14. If each MV product were to be considered as a separate market, the parties' activities overlap in the production of circuit breakers, switchgears (that could be further segmented into gas and air insulated switchgears) and distribution transformers:
  - (a) Circuit breakers act as a switch, for the user to turn current on and off, but are also capable of automatically breaking faulty currents (e.g. short-circuit current) that are far stronger than the nominal current. The circuit breaker is activated by the mechanic control mechanism. The protection relay analyses the current and triggers the circuit breaker to stop the current if the measured values exceed the thresholds set by the user.

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<sup>9</sup> Small and medium-sized industrial customers, as well as building owners, need to be connected to the utility network. As a result, they are supplied with medium voltage switchgears, distribution transformers, and low voltage switchboards.

<sup>10</sup> Building owners and small industrial customers purchase MV products for secondary distribution, whereas utilities and large industrial companies purchase products in primary and secondary distribution.

<sup>11</sup> Case COMP/M.3296 Areva/ALSTOM T&D, decision of 19 December 2003; Case COMP/M.3653 Siemens/VA Tech, decision of 13 July 2005.

(b) Switchgears are used for isolating electrical components and can use two alternative technologies: air and SF6 gas. Cubicles using air are referred to as Air Insulated Switchgear (“AIS”), whereas those using SF6 gas are called Gas Insulated Switchgear (“GIS”).<sup>12</sup>

(c) Finally, distribution transformers are used to step down the voltage supplied by the MV distribution grid (e.g. 24kV), into voltage values suitable for supplying low voltage lines with power ([380V - 220V]).

15. Most of the respondents of the market investigation considered that each MV product fulfils specific needs, requires different expertise to manufacture and, thus, are not interchangeable. Yet, a number of respondents also pointed out that customers prefer complete and integrated solutions, since they usually tender for specific equipment or projects. Therefore, customers have a preference for suppliers than offer a wide range of MV products.
16. With respect to switchgears, the vast majority of respondents were of the opinion that there are differences between air and gas insulated switchgears in terms of their characteristics and cost. The respondents, inter alia, mentioned that the lifetime of the GIS is longer than that of air insulated ones, that GIS have higher maintenance costs, that there are differences in the space needed since GIS are compact and need to be better protected to prevent environmental hazards (air pollution), that GIS and AIS have different prices, that the design is completely different, that both have different parameters, etc. However, many respondents also stated that they belong to the same product market (i.e. they are substitutes from a demand point of view), indicating that both products are available from the same suppliers, that the functionality is the same or that the customer can use either product for the same application.
17. In the present case, it is not necessary to conclude whether each MV product constitutes a separate product market, since under any alternative market definition effective competition would not be significantly impeded in the EEA or any substantial part thereof.

#### *Alternative segments*

18. In addition to the segmentation outlined in the previous paragraph, the parties propose to divide the MV products into: (i) Products used in primary distribution, (ii) Products used in secondary distribution. The parties submit that primary and secondary distribution cover different needs, since primary distribution reduces high voltage to medium voltage, whereas secondary distribution lowers medium voltage to low voltage. As well, primary and secondary distribution equipment differ in terms of reliability, protection and control requirements. MV equipment used in primary distribution has higher current ratings<sup>13</sup> than secondary equipment, and it is usually more complex than secondary equipment.

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<sup>12</sup> In order to isolate two electric parts, they must be kept at a certain distance from one to another. The minimum distance depends on the voltage (higher voltage requiring larger distance) and on the qualities of the gas. Air-insulated cubicles are rather bulky, in particular at the higher voltages, and sensitive to environmental conditions.

<sup>13</sup> In order for a primary substation to power multiple secondary substations, it must be capable of carrying a higher current than the secondary substation it is connected to. As such, the MV equipment in primary distribution, usually though not always, has higher current ratings than secondary equipment.

19. In light of the above, the parties submit that the MV products could be divided as follows:
- Products used in primary distribution: contactors, circuit breakers, switches, fuses, disconnectors, measuring transformers and switchgears (air and gas insulated switchgears).
  - Products used in secondary distribution: circuit breakers, reclosers, controllers, switches, fuses, switchgears<sup>14</sup>, disconnectors and Medium Voltage/Low Voltage (MV/LV) substations, inter alia.
20. The parties' activities would overlap in both the primary and secondary distribution market, as well as in the following sub-segments: (a) switchgears used in primary distribution (could be further segmented into air and gas insulated switchgears), (b) switchgears used in secondary distribution and (c) MV/LV substations used in secondary distribution.
21. The market investigation neither confirmed, nor refuted, the parties' view on this segmentation. In fact, half of the respondents stated that no further differentiation should be made between MV products for primary and secondary distribution, since the equipment used in both is similar. Even though the price of MV products used in primary distribution is higher, most of the MV products used in primary distribution can be used in secondary distribution.
22. In any case, the question whether the distribution market could be divided into primary or secondary distribution, or whether the market for MV products should be further segmented by type of product used in primary and secondary distribution can be left open, since under any alternative market definition effective competition would not be significantly impeded in the EEA or any substantial part thereof.

***(ii) Market for Energy Automation and Information Systems***

23. The parties to the Areva/Alstom transaction<sup>15</sup> described the market for energy automation and information systems as: *“the provision of energy management solutions for the efficient, reliable and secure operation of energy infrastructure and markets. These solutions include the integration of various products (protective relays, measurement devices and data communication devices), systems (network management, market management, power automation) and services (operation, maintenance, consulting)”*. The parties in this case agree with this market definition.
24. However, in a later decision the Commission<sup>16</sup> has further divided this market into two sub-segments: (i) power system management<sup>17</sup> and (ii) protection relays. Power system management consists of the provision of complete solutions for the operation

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<sup>14</sup> In secondary distribution customers do not, generally, indicate the type of switchgear (air or gas insulated) they want to purchase. Manufactures can, therefore, sell either gas or air insulated switchgears. As a result, it is not necessary to further segment the secondary distribution market into air and gas insulated switchgears.

<sup>15</sup> Case COMP/M 3296 Areva/Alstom T&D, decision of 19 December 2003

<sup>16</sup> Case COMP/M.3653 Siemens/VA Tech, decision of 13 July 2005.

<sup>17</sup> The parties consider that the equivalent to power management in distribution activities is 'substation automation', which consists in providing solutions integrating various products to measurement devices and data communication devices with systems (such as network management, market management and power automation systems) and services (such as operation, maintenance and consulting services). Schneider is not active in this sub-segment.

of electrical power networks, whilst a protection relay is a device designed to assess conditions (such as overload, reverse power flow, etc.) on an electric circuit and activate circuit breakers when a fault is found. The parties' activities would only overlap in the market for protection relays.

25. In the market investigation, the majority of respondents considered that power system management and protection relays are two different products from a technical perspective, based on different technical procedures. While protection relays are mostly focused on a concrete aspect of protecting electrical grids, power system management is a much more general “concept” which could include different functions such as monitoring, control, protection, energy management, etc.
26. Nevertheless, it is not necessary to come to a conclusion as to whether power system management and protection relays are part of the same product market or not, since under any product market definition, competition will not be significantly impeded in the EEA or any significant part of that area.

### **Relevant geographic markets**

27. In previous cases<sup>18</sup>, the Commission indicated that the market for T&D equipment was at least EEA-wide in scope.
28. According to the parties, the markets for MV products and Energy Automation and Information Systems are at least EEA-wide. The reasons for that are: (i) there are no trade barriers through technical standards, (ii) the vast majority of customers and the major suppliers are active at the EEA level, and (iii) transportation costs do not limit the ability of manufacturers to compete effectively in countries where they do not have production.
29. The vast majority of the respondents to the Commission's market investigation stated that the markets for T&D equipment are mostly worldwide or, at least, EEA wide. First, the transport costs are not significant compared to the sales price (varying from 3 to 10% of the total price). Second, major manufacturers supply worldwide and are able to supply according to all national and international standards.
30. However, some respondents also pointed out that there are different regional standards and specifications, and that not all players are able to comply with these requirements. In addition, several respondents underlined that European suppliers have an advantage in terms of transport costs to supply the EEA.
31. For the narrower product markets, i.e. switchgears<sup>19</sup>, MV/LV substations, circuit breakers, protection relays and distribution transformers, the majority of respondents considered the relevant geographic market to be worldwide or, at least, EEA wide.
32. Given the above, the market for MV products and energy automation and information systems, as well as their further delineations, could be defined as, at least, EEA wide. For the purposes of this decision the effects of the proposed transaction on worldwide markets are also considered.

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<sup>18</sup> COMP/M.3296-Areva/Alstom T&D, para 17; COMP/M.3653-Siemens/VA Tech, para 82

<sup>19</sup> Both GIS and AIS for primary and secondary distribution.

## **B. COMPETITIVE ASSESSMENT**

### ***(i) Overall market for MV products***

#### Market shares by value for MV products in the EEA (2008)

	Merging parties	ABB	Siemens	Ormazabal	Others
MV Products	[20-30]%	[10-20]%	[10-20]%	[5-10]%	[40-50]%

*Source: parties' estimates*

33. As showed in the above table, in the overall market for MV products the merged entity will continue to face competition from its main competitors in the EEA: ABB, Siemens and Ormazabal. In addition, other small players will be also present in this market, such as Cahors, Cooper, Pauwels, Eaton, Efacec, FKI, Lucy, Tavrída, and ZPUE Włoszczowa, inter alia, all of them with a market share between [0-5] %. If the market for MV products were to be considered as worldwide in scope, the parties' combined market share would be below [10-20]% ([10-20]% in 2008).
34. The parties submit that the transaction will not give rise no any competition concerns due to the following elements:
- (a) The main competitors, ABB and Siemens, have a portfolio advantage. Both companies are able to supply the whole range of Transmission and Distribution (T&D) products that utilities make use of when developing transmission and distribution projects. In this regard, Siemens and ABB have expanded their presence in the T&D market through recent acquisitions<sup>20</sup>.
- (b) The major competitors will remain, so any hypothetical increase in prices will be defeated by the reaction of these competitors.
- (c) There exist small but dynamic competitors that have increased their activities throughout Europe in the last years, such as Ormazabal<sup>21</sup>, Tavrída<sup>22</sup>, Matelec<sup>23</sup> and Elimsan<sup>24</sup>. In addition, some local players have experienced a significant growth, namely ZPUE<sup>25</sup>, Efacec<sup>26</sup>, BEZ<sup>27</sup>, Energobit<sup>28</sup>, Driescher<sup>29</sup>, and Tesar<sup>30</sup>.

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<sup>20</sup> Siemens acquired VA Tech in 2005 and ABB acquired Westingcorp, a manufacturer of HV capacitors, Comen Spa, an Italian manufacturer of transformers components, and Kuhlman, a manufacturer of transformers, in 2008 and 2009.

<sup>21</sup> Ormazabal acquired Felten&Guillaume Switchgear in 2004, which had plants in Europe and China. Ormazabal has significantly increased its MV business in the recent years, from EUR [...] million in 2001, to EUR [...] million in 2008.

<sup>22</sup> Tavrída, a player active in circuit breakers and protection relays, is now present in most of Eastern Europe.

<sup>23</sup> Matelec, a Lebanese manufacturer of distribution transformers, secondary switchgears, MV/LV substations, protection relays, MV systems and turnkey projects, inter alia, has developed its activities in the EEA.

<sup>24</sup> Elisan, a Turkish manufacturer of HV, MV (primary products) and LV products, has extended its presence in the EEA.

<sup>25</sup> ZPUE, a Polish manufacturers that has grown in the last 8 years from EUR [...] million to EUR [...] million, manufactures switchgears and MV/LV substations.



(d) The parties' large customers have substantial buyer power sufficient to fend off any attempt to increase prices. The parties submit that utilities, large industrial groups and big infrastructure sites are able to negotiate low prices by organizing their purchases in large tenders. It should be noted that almost all the sales ([75-85]%) of MV products in the EEA are made via competitive bidding processes or through requests for quotes made to various suppliers (structured tendering processes).

Moreover, the contracts won through competitive tenders include multiple provisions protecting the buyer's interests: (i) contracts are, generally, of limited duration (2 to 3 years for utilities); (ii) where multiyear contracts are awarded, the price adjustment terms favour the buyer (iii) often the price adjustment clause does not cover labour costs<sup>31</sup>.

(e) Customer are able to switch suppliers. With regard to utilities, all products included in the short-list of approved products for the tenders comply with the utilities' norms. Utilities enhance their negotiating position by contracting with multiple suppliers and qualifying more suppliers than they actually contract. Therefore, switching between these approved products/suppliers is easy. The large non-utility customers can easily switch suppliers, since they chose their suppliers on the basis of individual projects.

35. Concerning the market investigation, the majority of the respondents underlined that the market for MV is a competitive market that has a balanced mix of global and niche suppliers. Some respondents stated that there are a large number of suppliers, particularly in some MV sub-segments. The majority submitted that the number of suppliers post-transaction will be adequate to provide a satisfactory level of competition. As well, the market investigation confirmed that after the transaction Schneider will face strong competition from its main competitors, ABB and Siemens, which in turn have increased their market presence in the T&D market over the last years.
36. Regarding the barriers to entry, both customers and competitors pointed out that it is difficult to enter in the market for MV products, due to the high investments, the complex technological know-how and experience required, as well as the large amount of competitors present in this market. However, many of the respondents highlighted entries into the MV market during the last years, specifically for the following products: MV/LV substations, circuit breakers, distribution transformers, switchgears and protection relays. Such entry led to the appearance of new competitors in Germany, Russia, Poland (ZPUE), Hungary, Turkey, Lebanon (Matelec), Korea, China, Portugal (Efacec), the Netherlands (Eaton), Brazil (WEG), Sweden (Hexaformer), Romania and India (Crompton Greaves and Vijay). Some respondents also underlined that Indian and Chinese players have not experienced much success to date to enter into the EEA market, whereas Japanese players appear to be more credible competitors.

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<sup>26</sup> Efacec is a Portuguese manufacturer that has more than doubled its T&D Division in 3 years (EUR [...] million, in 2008). Efacec offers a complete range of MV products (switchgears, energy automation and information systems, and turnkey systems), as well as HV switchgears and power transformers.

<sup>27</sup> BEZ is a Slovak distribution transformer manufacturer that has also sales in the Czech Republic, Germany, Bulgaria, Romania, Russia and Cuba. It has also almost doubled its revenues in the last 3 years.

<sup>28</sup> Energobit is a manufacturer of switchgears, MV/LV substations, distribution transformers and energy automation and information systems.

<sup>29</sup> Driescher is a German manufacturer of switchgears and primary products.

<sup>30</sup> Tesar is an Italian manufacturer of distribution transformers that is present in different countries throughout the EEA.

<sup>31</sup> As a result, the contractor cannot pass on increases in labour costs to the final price.

37. Some respondents also believed that new entrants will enter into the EEA market in the following 3 years, in particular Korean and Chinese players, such as Nari, Sifang, Xuji, Dongfang and SAC.
38. Overall, the market investigation confirmed the existence of numerous and dynamic small players in the market, as well as corroborated the possibility of these companies to expand or enter into the EEA market for MV products.
39. With respect to the customers' countervailing buyer power, the vast majority of the respondents submitted that customers have a significant buyer power vis-à-vis their suppliers. First, suppliers tend to lower prices in order to increase their customer base<sup>32</sup>. Second, tendering processes in the market for MV products often involve high volume orders, which enhance the customer's ability to negotiate lower prices. In this respect, an overwhelming majority pointed out that most supply contracts are awarded through tenders and that customers re-tender their requirements every 2-3 years. The market investigation also revealed that customers multi source, relying on 2-3 suppliers on average. Moreover, customers usually qualify more suppliers than they eventually contract with in each tendering process, thus switching from one qualified supplier to another does not involve significant costs.
40. In addition to the above mentioned, the majority of the respondents stated that the transaction will not have a significant impact on the market for MV products, and that sufficient suppliers will remain in the market after the transaction, ensuring an adequate level of competition.
41. In light of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards non-coordinated effects in the market for MV products.

***(ii) Market for MV products in Primary Distribution***

42. The parties' activities would overlap in the following product markets in primary distribution: (i) total MV products used in primary distribution, (ii) switchgears used in primary distribution, (iii) gas insulated switchgears (GIS) used in primary distribution and, (iv) air insulated switchgears (AIS) used in primary distribution.

Market shares by value for MV products used in primary distribution in the EEA (2008):

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<sup>32</sup> Often contracts in these markets are of high value and involve large investments, while switching between qualified suppliers does not imply high switching costs for the customer. Thus, companies with a limited customer/project base face a significant financial risk if losing one of the contracts.

	Merging parties	ABB	Siemens	Others
Total Primary Distribution	[30-40]%	[20-30]%	[10-20]%	[20-30]%
Primary Switchgears	[30-40]%	[20-30]%	[10-20]%	[20-30]%
AIS for primary distribution	[20-30]	[30-40]%	[10-20]%	[20-30]%
GIS for primary distribution	[30-40]%	[10-20]%	[10-20]%	[20-30]%

*Source: parties' estimates*

43. As illustrated in the table, the parties will continue to face competition from strong competitors present in the primary distribution market, such as ABB and Siemens, as well as from other small competitors that account for ca. [30-40]% of the market, such as Tavrida ([5-10]% market share in the EEA), Ormazabal ([0-5]%), Eaton, Efacec, Electrobudowa, FKI, ZPUE, Elimsan, Energobit and Driescher (all of them with market shares ranging from [0-5]%).
44. If a worldwide market for MV products in primary distribution were to be considered, the parties' combined market share would be merely [10-20]%. In addition, other strong and diversified suppliers would be present in this market (ABB: [10-20]%, Siemens, [5-10]%, Tavrida: [5-10]%, GE: [0-5]%, Eaton: [0-5]%, Mitsubishi: [0-5]%, Toshiba: [0-5]%, Powell: [0-5]%, Jaeps: [0-5]%, XD Group: [0-5]%, etc.).
45. The parties submit that for the worldwide market no concerns could arise due to the low market share of the parties. As regards the EEA market, the parties argue that the small players present in the market for primary distribution are very active and have experienced a significant growth during the last years. Most of them also offer a wide range of MV products<sup>33</sup>. In that sense, it should be pointed out that switchgears for primary distribution account for ca. [90-100]% of the parties' total sales in primary distribution. Therefore, the merged entity, contrary to most of its competitors, will not be able to offer a wide range of primary products to its customers. In this respect, a number of the respondents to the market investigation also underlined that companies offering a wider portfolio could have a competitive advantage over the more specialised suppliers.
46. The parties also argue that customers have large countervailing power and are able to switch suppliers without incurring significant costs. The market investigation broadly confirmed the parties' views.
47. Regarding an alternative segmentation of the primary distribution market by product, the parties' activities would only overlap in the production of switchgears for primary distribution. However, the market shares would be very similar to the ones in the overall market for MV products used in primary distribution in the EEA. A further segmentation, into gas and air insulated switchgears for primary distribution, would only change the market shares slightly. In all cases the parties' combined market shares

<sup>33</sup> Namely: Ormazabal, Efacec, Elimsan and Energobit.

would not exceed [40-50]%, whilst other strong competitors would be active in these markets.

48. In this regard, the parties submit that the market for switchgears (both GIS and AIS) is a growing and highly competitive market. In fact, as confirmed by the market investigation, several companies have entered or expanded their activities in the switchgears' market for primary distribution in the last years (i.e. Elimsan from Turkey, ZPUE from Poland, Efacec from Portugal, Energobit from Romania and Driescher from Germany). Most of these companies<sup>34</sup> offer a wide range of primary distribution products, whereas the merged entity will be mainly specialised in GIS and AIS switchgears. In addition, the parties' current capacity utilization in primary switchgears is very high (ca. [80-90]%), and hence they cannot increase their production readily. Competitors have a somewhat lower capacity utilisation rate, giving them more leeway to increase production.
49. Additionally, the vast majority of the customers responding to the Commission's enquiries considered that a sufficient number of suppliers would remain in the market after the transaction and had no strong objections to it.
50. Given the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards non-coordinated effects in the market for MV products in primary distribution, or any of its further segmentations.

***(ii) Market for MV products in Secondary Distribution***

51. The parties' activities would overlap in the following product markets in secondary distribution: (i) total MV products used in secondary distribution, (ii) switchgears used in secondary distribution, (iii) MV/LV substations.

Market shares by value for MV products used in secondary distribution in the EEA (2008):

	Merging parties	ABB	Siemens	Ormazabal
Total Secondary Distribution	[20-30]%	[10-20]%	[5-10]%	[10-20]%
Secondary Switchgears	[30-40]%	[10-20]%	[10-20]%	[10-20]%
MV/LV Substations	[20-30]%	[5-10]%	[5-10]%	[10-20]%

*Source: parties' estimates*

52. The parties' combined market share after the transaction will be lower than [30-40]% in the EEA, whilst other significant competitors will remain in the market, such as ABB, Siemens and Ormazabal. Other small competitors will account for ca. [40-50]% of the market, inter alia: Cahors, Cooper, Efacec, Energobit, FKI, ZPUE, with [0-5]% market share each, as well as numerous small-sized MV/LV substations' suppliers. If a worldwide market would be considered, the merged entity would have a considerably lower market share ([10-20]%).

<sup>34</sup> Namely: Ormazabal, Efacec, Elimsan and Energobit.

53. If a further sub-segmentation of the market were to be considered, the parties' activities would only overlap in secondary switchgears and MV/LV substations. In none of the markets would they have a market share above [30-40]%, and the merged entity will continue to face competition from three strong players and numerous small but very dynamic players.
54. The parties submit that due to the moderate market shares in all alternative markets, both on an EEA and worldwide level, no competition concerns could arise from the transaction. In addition, the parties' current capacity utilization is on average [10-20]% higher than that of their competitors, especially in secondary switchgears (between [80-90]%), and they cannot increase their production readily. The parties also note that Siemens invested EUR [...] millions to increase the capacity of one of its switchgear facilities in 2009.
55. The parties also argue that customers have significant countervailing power and are able to switch suppliers without incurring significant costs. The market investigation also very largely confirmed the parties' views.
56. Moreover, as in the case of primary products, the parties state that the small players present in the market for primary distribution are very active and have grown considerably in recent years. This is the case for, among others, (i) Matelec, a Lebanese player with a wide range of products; (ii) ZPUE, a Polish manufacturer well established in Eastern Europe, and (iii) Efacec, which is the merged entity of two Portuguese players and is active in all MV products and turnkey projects. Efacec is present in Europe, China, Middle East, Africa and South America. These 3 companies offer a wide range of MV products, and are active in both secondary switchgears and MV/LV substations which, according to some respondents, provides them with a competitive advantage (see above, § 45). Also, they offer a competitive price/quality ratio that allows them to compete efficiently with larger players.
57. The market investigation confirmed the validity of these arguments. Several respondents also indicated that new entrants, in particular from Hungary, India, Korea and China, could be expected in the markets for secondary switchgears and MV/LV substations in the future.
58. Finally, the majority of the customers did not indicate any negative effect of the transaction on the markets for secondary switchgears or MV/LV substations. They considered that sufficient suppliers will remain in the market after the transaction. Only some respondents submitted that the transaction would reinforce Schneider's position in both markets.
59. Given these circumstances, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards non-coordinated effects in the market for MV products in secondary distribution, or any of its further sub-segmentations.

**(iii) Market for Circuit Breakers**

Market shares by value for circuit breakers in the EEA (2008):

	Merging parties	ABB	Siemens	Others
Circuit breakers	[20-30]%	[50-60]%	[10-20]%	[10-20]%

*Source: parties' estimates*

60. Post-transaction, the merged entity will become the third player in the market for circuit breakers in the EEA, after the market leader ABB and Siemens. Three other players are active in the market: Tavrída and Eaton, with a market share of around [5-10]% each, and Driescher, with [0-5]% of the market. On a worldwide level, the parties' combined market share would be less than [10-20]% ([10-20]% in 2008).
61. The parties also submit that their market shares in circuit breakers have been decreasing during the last 3-5 years. One of the reasons has been the successful entry of Tavrída into the circuit breaker segment.
62. In the market investigation the majority of respondents considered that the transaction will have no or very limited impact on their own businesses. None of the customers expressed strong views against the proposed transaction.
63. Due to the low market shares of the merged entity in the market for circuit breakers, as well as the additional circumstances, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards non-coordinated effects in the market for circuit breakers.

**(iv) Market for Distribution Transformers**

Market shares by value for distribution transformers in the EEA (2008):

	Merging parties	ABB	Siemens	Others
Distribution transformers	[10-20]%	[10-20]%	[10-20]%	[50-60]%

*Source: parties' estimates*

64. Following the transaction, the three main competitors, the merged entity, ABB and Siemens, will have very similar and moderate market shares, whereas the rest of the market ([50-60]%) will be composed by numerous small players, such as: Alstom and Pauwels ([5-10]% each), or Efacec, SGB, SMIT, Tesar, Cahors, Imefi, Imelfa, TMC, etc, with a market share between [0-5]%, each. The market, thus, is not concentrated. On a worldwide level, the merged entity would have a market share of [5-10]%
65. The parties submit that their market shares have slightly decreased over the last years due to the Indian suppliers, as well as other newcomers entering the EEA market. In addition, the parties' current capacity utilization in distribution transformers is higher than that of their competitors (ca. [90-100]%), thus they cannot increase their production readily.

66. During the market investigation, the majority of the respondents did not consider that the transaction will have a significant impact on the market for distribution transformers.
67. Given the low market shares in the market for distribution transformers and the additional circumstances, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards non-coordinated effects in the market for distribution transformers.

**(v) Market for Protection Relays**

Market shares by value for protection relays in the EEA (2008):

	Merging parties	ABB	Siemens	Others
Protection Relays	[20-30]%	[10-20]%	[20-30]%	[30-40]%

*Source: parties' estimates*

68. On a market for energy automation and information systems the parties' combined market share would be less than [10-20]%. Only if the sub-segment of protection relays is considered as a relevant product market would the transaction give rise to an affected market. In this case, the merged entity would have a market share of [20-30]%, but will continue to compete in the market with significant players, such as ABB, Siemens, as well as with other players with smaller market shares such as GE, Artèche, ZIV, Microener and Tytronics, inter alia, with a market share of [0-5]% each. Moreover, the transaction will give rise to an increment of only [0-5]%. Finally, on a worldwide level, the parties' combined market share post-transaction would be notably lower ([10-20]%).
69. The parties argue that no competition concerns would arise from the transaction due to the following factors: (i) credible and strong competitors will remain post-transaction; (ii) new companies have recently entered the EEA market, such as Matelec and Tavrida in the case of protection relays, and (iii) customers have significant buyer power, thus can defeat any attempt of the merged entity to rise prices. The market investigation confirmed the parties' arguments in this regard.
70. Furthermore, the majority of the customers did not express competition concerns due to the transaction. From the market investigation it appears that the transaction will not have a significant impact on the energy automation and information systems market.
71. Given the low increment in market shares due to the transaction, and the additional circumstances mentioned, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards non-coordinated effects in the market for protection relays.

**C. COORDINATED EFFECTS**

72. A merger in a concentrated market may increase the likelihood that firms are able to coordinate their behaviour in the market. In the present case, the proposed transaction may result in a higher level of concentration in some of the relevant markets. However, given the specific market context, the Commission considers that the operation is not likely to increase the incentives for coordination in the markets concerned.

73. While reducing the number of the major players from four to three, the proposed transaction will at the same time break the symmetry of market shares among the three remaining main competitors in almost all the markets<sup>35</sup>. Moreover, the markets affected by the operation are bidding markets in which tenders are infrequent and mostly cover large projects. The market investigation confirmed that there is a low level of market transparency in the relevant markets. First, MV manufacturers do not publish or operate on the basis of price lists. Second, the price/value of the winning bids is not usually published and the details never are.
74. Also, reactions from third parties could jeopardize the results expected from a possible coordination (i.e. eliminate the profits of such coordination). As confirmed by the Commission's market investigation, following the proposed transaction there remain a considerable number of small but competitive players competing with the main players Schneider/Areva, ABB and Siemens in all markets. As can be seen from the detailed market share data discussed above, smaller players account for [40-50]% of the overall market for MV products; in individual product markets, they collectively achieve market shares between 10% and [60]%. Furthermore there exist manufacturers, especially those from China, Korea and India, that could expand or enter into the EEA market. In addition, customers have significant buyer power vis-à-vis their suppliers.
75. Finally, none of the respondents to the market investigation expressed any concern about increased incentives for coordination in relation to MV products as a result of the transaction.
76. Given the above, it appears unlikely that the transaction will increase the likelihood of coordination in the relevant markets.
77. It follows that the proposed transaction does not raise serious doubts as to its compatibility with the common market with respect to coordinated effects in any of the affected markets.

## **VI. CONCLUSION**

78. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

(signed)

Joaquín ALMUNIA

Vice-President of the Commission

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<sup>35</sup> Only in the market for distribution transformers the symmetry will remain, however the increment due to the transaction is minor (only [0-5]%). As a result, the transaction will not change significantly Schneider's position in the market post-merger. Thus, it seems unlikely that the transaction will increase the incentives to coordinate in the market for distribution transformers.