

***Case No COMP/M.5886 -
EMERSON ELECTRIC/
CHLORIDE GROUP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/08/2010

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EUROPEAN COMMISSION

Brussels, 24.8.2010

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5886 – EMERSON ELECTRIC/ CHLORIDE GROUP
Notification of 19.07.2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19 July 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004 ("the Merger Regulation") by which Emerson Electric Company ("Emerson", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Chloride Group plc ("Chloride", UK) by way of a public bid.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, 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.

I. THE PARTIES AND THE OPERATION

3. Emerson is a global supplier of technological solutions for network power, process management, industrial automation, climate technologies, storage solutions, motor technologies, and appliances and tools products. Emerson sells its uninterruptible power supply ("UPS") devices by its Liebert division.
4. Chloride is active in the production and sale secured power solutions such as UPS as well as related after-sales services.
5. On 29 June 2010, Emerson made a public offer to acquire the entire issued and to be issued share capital of Chloride. On Friday 2 July, the board of Chloride unanimously recommended Emerson's offer. The transaction, leading to the acquisition of sole control over Chloride, thus constitutes a concentration within the meaning of Article 3(1)(b) Merger Regulation.

III. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million² (Emerson: EUR 15.459 billion; Chloride: EUR 379.3 million in 2009), in each of four Member States the combined aggregate turnover of the undertakings concerned is more than EUR 100 million (France: Emerson [...] million and Chloride: [...] million, Germany: Emerson [...] million and Chloride [...] million, Italy: Emerson [...] million and Chloride [...] million, UK: Emerson [...] million and Chloride [...] million), in each of these Member States the aggregate turnover of each of the undertakings concerned is more than EUR 25 million, and the aggregate EU-wide turnover of the undertakings concerned is more than EUR 100 million. The concentration therefore has an EU dimension (Art. 1(3) Merger Regulation).

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

UPS devices

7. The overlaps in the Parties' activities lead to affected markets in the markets for the production and sale of uninterruptible power supplies (UPS) devices. UPS products are used to protect electronic applications from fluctuations or interruptions in their input power supply. They provide back-up power in the case of a power cut, and also regulate the power signal going to their applications. They have various end uses, from individual PCs and devices for small businesses, to applications in the telecommunications industry, hospitals, airports, internet service providers, banks, security systems and industrial applications.
8. UPS products are most commonly classified according to the power which they can supply to their applications (measured in volt-amperes). Accordingly, in its decision in *Schneider Electric/APC*,³ the Commission distinguished between UPS devices below

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

³ Case No COMP/M.4475 *Schneider Electric / APC*, Decision of 8 February 2007. See also Case No COMP/M.3347 *Schneider Electric / MGE-UPS*, Decision of 5 February 2004.

10kVA⁴ ("low UPSs") and above 10kVA ("medium-high UPSs"). The Commission also suggested further distinguishing for low UPSs between 0-3kVA and 3-10kVA devices, but ultimately left open the question.

9. The Parties agree with the Commission's distinction between UPS above and below 10kVA. The market investigation has largely confirmed this basic segmentation. Notably, it confirmed a number of important differences between UPS devices of below and above 10 KVA in terms of technologies, distribution channels and customers, as well as significant price differences between the two basic groups.
10. Smaller devices of below 10 kVA are usually providing power to lower power-demanding applications and are typically used by small-medium sized businesses or households. They are distributed via wholesale distributors (IT distributors or electrical equipment distributors) and typically do not involve after-sales services. The products are standardised and manufacturers sometimes outsource production, sourcing the products from Asian producers. The 10kVA cut-off point also roughly corresponds to the border between applications powered by either one-phase or three-phase input voltages.
11. It was also pointed out in the investigation that a possible distinction could be made between 0-3 kVA and 3-10 kVA, where the 0-3 kVA range are a simple plug-to-plug devices (such as the ones providing power for a single computer station), whereas the 3-10 KVA are slightly more complex and require installation. However, for the purpose of this decision it is not necessary to further segment the market below 10 kVA, as the parties' market shares in this area are very small.⁵
12. Larger devices of over 10 kVA are providing back-up power to more demanding applications and serve a variety of uses such as data-centres, hospitals or industrial applications. These devices are typically not sourced via distributors, but they are usually tendered by either the end-customers, or (more often) a selection procedure is organised by specialised contractors and design engineering firms which set-up and procure the whole power-distribution infrastructure. The products are more complex and they are typically produced in-house by the manufacturers.
13. Competitors in the investigation observe that the technology for devices of above 10 kVA is more complex and suppliers have to develop a network of sales and services organisations to serve the customers. After-sales services are typical for larger devices and are seen as very important by the customers, since they guarantee a smooth functioning of the back-up power system for the whole lifetime of the product and can provide quick response in case of reparations.
14. With regard to the segment of above 10 kVA UPS devices, competitors' replies in the investigation suggest that a possible distinction could be made according to the end-use of the UPS devices between UPS for industrial uses (such as power generation, oil&gas industry and other industries) and non-industrial uses (mainly IT-related applications).

⁴ Kilo volt-ampere.

⁵ According to market share information provided by the parties in Annex 1 to the Form CO, the combined market shares are typically below [0-10]% and in any event below 15% in any of the EEA member states for both 0-3kVA and 3-10 kVA segment.

The parties themselves explain that UPS for industrial uses need to be considerably more robust, since they operate in a hostile environment (in terms of humidity, temperature, dust, inadequate airflow) and need to be equipped with more resistant and more powerful components and enclosures.

15. Chloride derives a considerable proportion of its UPS sales with devices for industrial uses. Emerson does not produce these products [...]. Competitors also indicate that the industrial segment has specificities in terms of technologies, production process know-how and access to the market, which distinguishes it from all other non-industrial end-use applications.⁶ However, as there is no overlap between the Parties in the industrial segment, it is not necessary to consider the segmentation according to end-uses further for the purpose of this decision.
16. In the investigation, some competitors also indicate that further sub-segmentations of the above 10 kVA segment may be possible, suggesting distinguishing medium-large UPS devices which are more standardised than larger ones. Cut-off points between the two groups would be in the area of around 100-250 kVA.⁷ Emerson also uses an internal segmentation roughly corresponding to the above distinction, recognising a segment for [...], although stating that the exact cut-off point is somewhat arbitrary. However, as the Parties' market shares in the potential segment of above [...] would not fundamentally differ from the ones in the above 10 kVA segment, there is no need to consider this sub-segmentation further for the purpose of this decision.
17. In a similar way, it is not necessary to consider a possible further distinction of the UPS market according to the technology (static or rotary, as suggested by some market participants in the market investigation), since neither of the Parties is active in rotary UPS products.⁸
18. Based on the above, the Commission thus considers that the appropriate framework for analysing the present transaction is the market for UPS devices, and specifically the sub-segment of medium-large UPS devices of above 10 kVA.

UPS services

19. In addition to the market for the UPS devices themselves, there is a market for after-sales services, typically for end-users of larger products of UPS above 10kVA.
20. Specific service contracts are rarely taken-up by purchasers of small UPS products (of below 10 kVA), since they are of lower value and have a limited lifespan. Customers of large UPS products, however, normally at some stage require an after-sales service package to maximise the UPS device's life-span considering that the UPS devices are generally used for business critical applications. On purchase, UPS products typically

⁶ Competitors mentioning that high reputation and established relations within the industrial communities or specific engineering/consulting companies are important factors to consider in the industrial UPS segment. See Questionnaire to competitors of 27.7.2010, questions 8-10.

⁷ See Questionnaire to competitors of 27.7.2010, question 7.

⁸ According to Emerson, rotary UPS products represent only a small portion of the total UPS market ([10-20]% in the EMEA region), so the parties' market shares on a potential market for static UPS would not significantly differ from the overall UPS market.

have a one year (above 10kVA) or two year (below 10kVA) warranty period. Shortly before or at the expiry of the warranty, after-sales services are offered by the UPS manufacturers, but also by independent service providers.

21. Usually, UPS manufacturers would offer after-sales service packages for their own UPS devices and the market investigation confirms that it is not common that they would normally compete for servicing other manufacturer's devices. This is because their technicians are specialised and trained in their own devices, and the investigation suggests that UPS manufacturers are usually not actively seeking this business. However, UPS manufacturers may also enter into service contracts for UPS devices produced by other suppliers, for example if the customer operates UPS from multiple suppliers.
22. As cross-servicing does occur and the Parties also compete in the market for after-sales UPS services, this market will also be analysed in this decision.

B. Relevant geographic markets

UPS devices

23. In *Schneider Electric/APC*, the Commission did not reach a definitive position on the geographic scope of the market for UPS devices, but analysed the UPS markets both at EEA-wide and national level. While the Parties submit that the competitive dynamics of the UPS markets are best analysed on an EEA-wide basis, they also provided market data on the basis of national markets.
24. The market investigation suggests that a local presence is an important factor for UPS manufacturers to be successful in a given country. Although some customers indicated that they would source centrally across the EEA, others source nationally. For small UPS devices, local marketing and sales force seem to be important, whereas for selling larger UPS, local presence in terms of specialised sales force and after-sales services (to respond rapidly) was referred to as being key by market participants.
25. However, for the purpose of the present decision the exact scope of the relevant geographic market can be left open, as the transaction does not raise serious doubts on either an EEA market or potential national markets.

UPS services

26. With regard to the service market, the Parties submit that such market would be national in scope. The main reason is that UPS suppliers' service organisations generally operate on a national basis from the UPS suppliers' direct sales or dedicated service offices in each of the countries where they are present. Where neither is present, service is typically carried out by exclusive country distributors who receive training and support from the UPS supplier. Furthermore, independent service providers who compete for service contracts typically operate on a national basis. The investigation also indicated that a local after sales service is very important and that services are indeed mostly provided on a national level.
27. However, for the purposes of the decision, the geographic scope of the market for the UPS after sales services market can be left open, since the concentration will not give rise to serious doubts on either EEA level nor on any potential national market.

C. Competitive Assessment

UPS devices

28. The total size of the EEA market for UPS devices in 2009 was EUR [1200-1250] million according to parties' estimates, roughly half of that (EUR [600-650] million) being attributable to devices of above 10 kVA.
29. On an EEA level, the Parties had combined market shares of [10-20]% on an overall UPS devices market. They would hold [0-5]% on the market below 3kVA, [0-5]% on the market between 3 and 10kVA and [10-20]% on the market above 10kVA. The EEA market shares of the leading players (including combined market shares for the merged entity) are listed in the table below.

Total UPS Market Shares in the EEA (2009)

Company	Market share (%)			
	Total market	≤ 3kVA	3kVA < & ≤10kVA	>10kVA
Emerson	[0-5]	[0-5]	[0-5]	[5-10]
Chloride	[5-10]	[0-5]	[0-5]	[10-20]
Combined	[10-20]	[0-5]	[0-5]	[10-20]
Schneider Electric	[20-30]	[40-50]	[30-40]	[10-20]
Eaton	[10-20]	[20-30]	[20-30]	[5-10]
Riello	[5-10]	[5-10]	[10-20]	[5-10]
Socomec	[5-10]	[5-10]	[5-10]	[5-10]
Other	[30-40]	[10-20]	[10-20]	[40-50]

Source: Form CO, p. 65.

30. Schneider Electric would remain the strongest player overall and in all sub-segments. On the total UPS market, the merged entity would be third after Schneider Electric and Eaton, and followed by other competitors including Riello and Socomec.
31. Since the concentration does not lead to affected markets in the segments below 10kVA both on an EEA and a national level, the assessment focuses on the market for UPS devices above 10kVA. The following table provides for the development of the market shares of the leading players (including combined market shares for the merged entity) from 2007 to 2009.

>10kVA EEA Market Shares (2007-2009)

Company	Market share (%)		
	2007	2008	2009
Emerson	[0-5]	[0-5]	[5-10]
Chloride	[10-20]	[10-20]	[10-20]
<i>Combined</i>	<i>[10-20]</i>	<i>[10-20]</i>	<i>[10-20]</i>
Schneider Electric	[10-20]	[10-20]	[10-20]
Riello	[5-10]	[5-10]	[5-10]
Eaton	[0-5]	[5-10]	[5-10]
Socomec	[0-5]	[0-5]	[5-10]
Other	[50-60]	[50-60]	[40-50]

Source: Form CO, p. 115.

32. In the EEA market for UPS devices above 10kV, the combined market shares of the Parties did not exceed [10-20]% in the past three years. The merged entity will continue to face competition in particular by Schneider Electric ([10-20]%) as well as by Eaton, Riello and Socomec.
33. The Parties submit that, in addition to these "top" and "second" tier competitors, there are several other competitors, including Newave, AEG Power Solutions, General Electric as well as Piller, Hitec, Toshiba, Mitsubishi, Tripp-Lite, Powernetics, Gamatronics, Ippon, Salicru and Euro-Diesel, which accounted for [40-50]% of the market in 2009.
34. On a national level, the merged entity would have combined market shares over 15% in the countries listed in the table below.

Com-pany	Market shares (%) per country									
	AT	BE	BG	IE	IT	PL	PT	SL	ES	UK
Emerson	[5-10]	[5-10]	[10-20]	[60-70]	[10-20]	[5-10]	[0-5]	[20-30]	[5-10]	[0-5]
Chloride	[5-10]	[10-20]	[10-20]	[0-5]	[10-20]	[10-20]	[10-20]	0[0-5]	[10-20]	[10-20]
Combined	[10-20]	[10-20]3	[20-30]	[60-70]	[30-40]	[20-30]	[10-20]	[20-30]	[20-30]	[20-30]
Schneider Electric	[20-30]	[10-20]	[10-20]	[5-10]	[20-30]	[10-20]	[10-20]	[20-30]	[10-20]	[20-30]
Eaton	[5-10]	[5-10]	[5-10]	[0-5]	[5-10]	[5-10]	[0-5]	[5-10]	[5-10]	[10-20]
Riello	[10-20]	[5-10]	[5-10]	[0-5]	[5-10]	[5-10]	[0-5]	[10-20]	[5-10]	[10-20]
Socomec	[5-10]	[5-10]	[5-10]	[0-5]	[5-10]	[5-10]	[0-5]	[5-10]	[5-10]	[10-20]
Other	[30-40]	[40-50]	[30-40]	[20-30]	[20-30]	[30-40]	[50-60]	[20-30]	[40-50]	[20-30]

Source: Form CO.

35. The subsequent assessment will focus on those countries where the Parties would have a combined market share of above 25%.
36. In Bulgaria, the combined entity would become the strongest player with a combined market share of [20-30]%. However, Schneider Electric as well as Eaton, Riello and Socomec will continue to exert competitive pressure on the merged entity. The category of "other" players is composed in particular by Newave, AEG, Piller and GE.
37. In Italy, the merged entity would become the strongest player with a combined market share of [30-40]%. The Parties both had relatively strong historical presence in Italy. However, Schneider Electric will remain the strongest competitor with [20-30]%, and the merged entity would continue to face competition by all significant players Eaton, Riello and Socomec, as well as other companies such as Newave, AEG, Piller and Hitec.
38. With regard to Ireland, where the Parties would have a combined market share of [60-70]%, Emerson had [...] in Ireland in 2007 and only [0-5]% of total market share according to the Parties. Since it won one very large contract in a bidding process with [...] (worth approximately [...]), its market share increased in 2009. In the bidding process, aside from the Parties, Schneider Electric, Eaton, Socomec, GE and Newave participated. Without this contract, its market share in the above 10kVA market would only be [...]. Excluding the [...] contract, Emerson had UPS destination sales to Ireland of less than [...] in the first six months of 2010. The Irish customers confirmed that they would have sufficient alternatives and see no competition concerns arising as result of the transaction.
39. The market investigation showed that large UPS devices are typically awarded in tender-like procedures where several UPS suppliers are invited. It was suggested that the strongest competitors to each of the Parties was Schneider Electric. The feedback from the

investigation on the transaction was predominantly positive, and most customers and competitors alike stated that there will remain sufficient competition after the merger.

40. Therefore, the concentration does not raise serious doubts on the market(s) for all UPS devices, nor for USP devices of above 10kVA.

UPS services

41. The total size of the UPS service markets market for UPS devices in 2009 was EUR [550-600] million in the region of Europe, Middle East and Africa according to parties' estimates.⁹ Both parties achieve about [...]% of their total UPS turnover related to services.
42. The Parties submit that for the UPS manufacturers that provide services to their clients, independent service providers are the main source of competition, typically offering significantly lower prices than the original manufacturer. They explain that most UPS manufacturers would typically only derive a small amount of revenue from service contracts on competitors' devices. According to the Parties, UPS manufacturer's service revenues tend to be correlated to the size of that UPS supplier's product installed base, specifically to their sales of UPS devices above 10kVA.
43. [...] Such cross-servicing sales of Emerson amount to a very small proportion of its service revenue [...]. Chloride does provide after-sales services for competing UPS devices. In Chloride's financial year 2010, Chloride derived approximately [...]% of its total service revenue from cross-service contracts. Thus to a limited extent, the Parties do compete on the market for after-sales UPS services.
44. The concentration would lead to a number of affected service markets on a national level: Belgium (combined market share of [10-20]%), Germany ([10-20]%), Ireland ([20-30]%), Italy ([40-50]%), Portugal ([30-40]%), Spain ([20-30]%) and the UK ([20-30]%). The following table provides for the market shares of the most important players in those markets where the Parties have a combined market share of 25% and above.

⁹ Based on IMS report, see para 6.37 of Form CO. No EEA-specific estimate was available.

Company	Market share (in %) per country		
	Italy	Portugal	UK
Emerson	[10-20]	[0-5]	[5-10]
Chloride	[30-40]	[30-40]	[20-30]
Combined	[40-50]	[30-40]	[20-30]
Schneider Electric	[20-30]	[30-40]	[20-30]
Socomec	[5-10]	[5-10]	[5-10]
Eaton	[5-10]	[5-10]	[0-5]
Riello	[0-5]	[0-5]	[0-5]
Others (incl. independent service providers)	[10-20]	[10-20]	[30-40]

Source: Form CO.

45. The Parties submit that, in addition to the UPS devices providers, they face competition from independent service providers. Emerson competes to a very limited extent¹⁰ for the servicing of other manufacturer's devices since the overlap between Emerson and Chloride in terms of actual servicing is mainly in the provision of Chloride's after-sales services for Emerson's products. The parties confirm that, in any case, Chloride's cross-service revenue is generally only derived from contracts to service whole installations of UPS products including both Chloride and non-Chloride UPS products, where Chloride equipment constitutes the majority of the installed base. In addition, according to Emerson, some [...] % of the service contracts for Emerson products in the EEA are being captured by independent service providers who seem to be in any event the largest competitors for servicing Emerson's products.
46. In Italy, the parties would have [40-50] % combined market share in the service market. However, Chloride's revenues coming from cross-servicing represented only [...] % of its service revenues. Chloride estimates that about [...] % of this cross-servicing revenue (about [...]) relates to servicing Emerson's UPS products. This represents only about [0-5] % of the overall service market in Italy.
47. In Portugal, Chloride's service revenues 2009 coming from cross-servicing amounted to [...] %, representing about [0-10] % of the overall service market in Portugal. But in any

¹⁰ In Italy, only [...] % of Emerson's service revenue was derived from cross-servicing on a subcontracting basis in 2009 (i.e. [...] % of the overall services market). In Portugal, Emerson made [...] with cross-servicing. In the UK, Emerson derived only [...] % service revenue from servicing competitors' UPS devices (about [...] % of the overall service market).

case, Emerson's market share in the service market is *de minimis* ([0-5]%), so the transaction would not significantly change the competitive landscape.

48. In the UK, [...] % of Chloride's service revenues in the UK were derived from servicing competitor UPS products, representing only [5-10] % of the overall services market in the UK. Emerson is a relatively small player in the UK on the service market ([5-10] % market share) so the overlap would be limited. In addition, Emerson is a small player also on the devices market (about [0-5] % share on the above 10 kVA market and [0-5] % on the overall UPS market), so the installed basis of Emerson's UPS products which could potentially be affected by a loss of competition for services is minimal.
49. The market investigation did not reveal any specific concerns with regard to the UPS services.
50. Given in particular the limited actual competition between the parties and the sufficient competitive constraints on the merged entity, the concentration does not raise serious doubts with regard to the markets for services for UPS devices.

V. CONCLUSION

51. For the above reasons, the European 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 the Merger Regulation.

For the European Commission,
(signed)
Maroš Šefčovič
Vice-President of the European
Commission