

***Case No IV/M.1434 -
SCHNEIDER / LEXEL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/06/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.6.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M.1434 – SCHNEIDER/LEXEL

Notification of 25.02.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 25.02.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which Schneider S.A. (“Schneider”), France, will acquire sole control of Lexel A/S (“Lexel”), Denmark. The notification was declared incomplete on 17.03.1999, and was re-submitted on 29.04.1999.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Schneider is active in manufacturing and marketing of products and systems in the fields of electrical distribution, industrial control and automation.
4. Lexel manufactures and distributes electrical mechanical material, installation systems, and security and intelligent systems. Lexel was created as a joint venture between NKT Holding A/S (“NKT”), Denmark, a supplier of products and services to the power supply industry, and Ahlström (“Ahlström”), Finland, a paper and engineering group.
5. The proposed operation consists of the acquisition of sole control, by way of purchase of shares, of the whole of Lexel by Schneider.

II. CONCENTRATION

6. The acquisition by Schneider of Lexel constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY/EEA DIMENSION

7. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 5 billion¹ (in 1997: Schneider EUR 7.2 billion, Lexel EUR 391 million). The aggregate Community-wide turnover of each party exceeds EUR 250 million (Schneider EUR 3.4 billion, Lexel EUR 297 million). They do not achieve more than two-thirds of their turnover in one and the same Member State. The notified operation therefore has a Community dimension.
8. Given the significant market shares of Lexel in some of the Nordic countries it was necessary to investigate whether the operation was liable to create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the territories of the EFTA States or a substantial part thereof. For this reason, it was therefore considered that the proposed concentration was a co-operation case under the EEA Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

9. The transaction takes place in the sector of electrical distribution equipment, and communication and control components and systems for buildings, which the notifying party proposes to divide into the following segments :
- 1: Main switch boards (medium and low voltage power)
 - 2: Distribution panel boards (power low voltage)
 - 3: Cable ladders and trays
 - 4: Final low voltage panel-boards
 - 5: Wiring devices and systems; with further sub-segments
 - 5.A: Switches and outlets
 - 5.A.1: Components (e.g. sockets, switches, etc.)
 - 5.A.2: Control systems (for heating, air conditioning, etc.)
 - 5.A.3: Security and safety systems (alarm signals)
 - 5.A.4: Communication network systems
 - 5.B: Electrical accessories
 - 5.C: Trunkings
10. The segmentation as proposed by the notifying party has been widely confirmed by the competitors and the customers who responded to the investigation carried out by the Commission, with each segment corresponding to a specific product market. For the purpose of this case, however, the product market definition can be left open, as, in all alternatives considered the operation will not lead to the creation or strengthening of a dominant position.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

B. Relevant geographic market

11. The notifying party claims that the relevant geographic market for segments 1 to 4 is at least EU-wide, because technical standards are established at that level and because installation rules for these products are mainly harmonised in the EU.
12. By contrast, according to the notifying party, the geographic markets for the products in segment 5 are national, due to differences in configuration and installation rules, to customers' brand loyalty, and consumer taste. As a result of these national specificities, the design and the prices of products in segment 5 significantly vary from one Member State to another.
13. The view of the notifying party concerning the geographical scope for the segments 1 to 5 has been widely confirmed by the competitors and the customers which replied to the investigation carried out by the Commission. For the purpose of this case, however, the definition of the geographic market can be left open, since, in all alternatives considered, the operation will not lead to the creation or strengthening of a dominant position.

C. Assessment

1. Horizontal and vertical aspects

14. There is no overlap between the activities of the parties. Lexel is not active in segments 1, 2 and 4, Schneider is not active in segment 3, and, in segment 5, Lexel and Schneider do not operate on the same geographic markets.
15. The operation does not lead to any vertical integration either, as Schneider's products are neither upstream nor downstream from Lexel's.

2. Conglomerate aspects

16. However, the proposed operation can be seen in the context of conglomerate aspects as the products of the segments 1, 2, and 4 (produced by Schneider), and the products in segment 5 (manufactured by Lexel), appear to be of complementary nature, in particular, products in segments 4 and 5 compose the typical household installation.

In this respect, it has to be noted that, in some Nordic countries, Lexel enjoys significant market shares in a number of product markets in segment 5, as given below:

| | Denmark | Sweden | Finland | Norway |
|---------------|----------|----------|----------|----------|
| Segment 5.A.1 | [50-70]% | [40-50]% | [30-40]% | [40-60]% |
| Segment 5.A.2 | [<10]% | [<10]% | [<10]% | [<10]% |
| Segment 5.A.3 | [<10]% | [10-20]% | [10-20]% | [10-20]% |
| Segment 5.A.4 | [20-30]% | [<10]% | [10-20]% | [<10]% |
| Segment 5.B | [50-70]% | [30-40]% | [20-30]% | [60-80]% |
| Segment 5.C | [10-20]% | [60-80]% | [20-30]% | [50-70]% |

17. These market shares have been questioned by some of the competitors and customers which replied to the investigation conducted by the Commission. According to these third parties, Lexel might have significantly higher market shares in segment 5.A.1., especially in Norway and in Denmark. However, other third parties confirmed the estimation provided by the notifying party.
18. In view of these market shares, and given the complementarity between some of Lexel's and Schneider's products, the merged entity could try to bundle the sales of Lexel's products with those of Schneider's products, all the more as there appears to be strong brand loyalty in some markets of segment 5 (and especially in segment 5.A.1), and as, given the relatively modest size of the markets concerned and the national specificity's of the products in the Nordic countries. Moreover, market entry for new competitors does not seem very attractive, although competitors from South-East Asia have somewhat entered the markets with standardised simple products.
19. However, it appears that not all wholesalers distribute products in segments 1, 2 and 4 together with products in segment 5, as products in segments 1, 2 and 4 require other sales techniques and different related services (typically offered by manufacturers having the necessary technical expertise and scale in volume to comply with building contractor obligations).
20. Furthermore, in the Nordic countries, the wholesale level is highly concentrated. For instance, in Sweden, the five main wholesalers account for approximately 90% of the total wholesale market. A number of wholesalers are also vertically integrated with either installers or even with manufacturers, which are competitors to the parties. Consequently, wholesalers appear to have sufficient countervailing power to constrain the competitive behaviour of the merged entity.
21. Finally, although there exists some complementarity between Lexel's and Schneider's products, these products are often not purchased simultaneously (when not all elements of the electrical installation needs replacing), and the purchase pattern of the final consumers usually differs significantly between products in segments 1, 2 and 4 and products of segment 5. It follows that any bundling would appear to have only limited effect on the competitive position of the merged entity.

Conclusion

22. As mentioned above the proposed concentration is an EEA "co-operation case" and the Commission has been in liaison with the EFTA Surveillance Authority ("ESA"). ESA has expressed its views upon the concentration. In short, ESA concluded that

the proposed operation would not create or strengthen a dominant position in Norway, in view of the facts given above.

23. In view of the foregoing, it can be concluded that the proposed transaction would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. ANCILLARY RESTRAINTS

24. The parties involved in the proposed operation will enter into a non-competition clause of 5 years between Lexel and its former parent companies NKT and Alströhm. Moreover, NKT and Alströhm will not attempt to induce any personnel employed by Lexel from leaving their employment with the latter during a period of three years.

25. In view of the implementation of the new entity, i.e. mainly the transfer of know-how, both clauses can be considered to be ancillary to the proposed operation. However, the duration of the non-competition clause appears to exceed what is necessary for the operation, and therefore is only covered for a period of three years.

VI. CONCLUSION

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

For the Commission,