

***Case No COMP/M.2917 -  
WENDEL-KKR /  
LEGRAND***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 14/10/2002

*Also available in the CELEX database  
Document No 302M2917*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14/10/2002

SG (2002) D/232134-5

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties**

**Via :**

Dear Sir/Madam,

**Subject: Case No COMP/M.2917 – Wendel-KKR/Legrand  
Notification of 12/09/2002 pursuant to Article 4 of Council Regulation  
(EEC) No 4064/89<sup>1</sup>**

1. On 12.09.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) N° 4064/89 (hereafter : “the Merger Regulation”) by which Wendel Investissement (“Wendel”) and Kohlberg Kravis Roberts & Co (“KKR”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Legrand by way of purchase of shares.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

## I. THE PARTIES

3. Wendel is a French holding company, listed on the Paris Stock Market. It has a controlling stake in a number of companies, including Bureau Véritas, a French company which provides *inter alia* product certification services. KKR is a US-based company whose business is to make equity investment in management buyouts on behalf of itself and its investors. It has a controlling stake in a large number of companies, including Zumtobel, an Austrian company which manufactures emergency lighting systems and electrical fittings. Legrand is a French company, currently controlled by Schneider, which owns a 98% stake in its capital. It is the parent company of a group active in the production and sale of low-voltage electrical equipment.

## II. THE OPERATION

4. The operation consists in the acquisition by the Wendel Consortium of the whole of the Legrand's shares owned by Schneider through a chain of holding companies, ultimately controlled by a special purpose vehicle, a Luxemburg base holding company called "Lumina Parent" ("Lumina"). Lumina is jointly controlled by Wendel and KKR. Indeed, Wendel and KKR hold at the moment at the which the notification of the proposed transaction takes place almost all the shares in Lumina. Even though the shareholders' agreement between Wendel and KKR [CONFIDENTIAL], the parties will in any case retain joint control of Lumina. The shareholders' agreement also provides that Wendel and KKR will each appoint [CONFIDENTIAL] out of the [CONFIDENTIAL] members of the Board, [CONFIDENTIAL]. Moreover, the shareholders' agreement grants Wendel and KKR with veto rights in relation to key decision of Lumina and its subsidiaries (including Legrand). Such decisions include notably the approval of the three-year business plan and annual budgets of Legrand and the hiring or the firing of Legrand's management. Hence, Wendel and KKR will acquire joint control of Legrand. The operation is therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
5. The Share Purchase Agreement allows Schneider to terminate the sale if the Court of First Instance of the European Community annuls the Commission's prohibition decision in the Schneider/Legrand case.
6. The operation has a community dimension. Wendel, KKR and Legrand have a combined world-wide turnover in excess of 5 billion Euros<sup>2</sup> ([CONFIDENTIAL] billion Euros for Wendel, [CONFIDENTIAL] billion Euros for KKR and 3.1 billion Euros for Legrand) and the individual Community-wide turnover of each party is over 250 million Euros ([CONFIDENTIAL] million Euros for Wendel, [CONFIDENTIAL] million Euros for KKR and [CONFIDENTIAL] million Euros for Legrand). There is no Member State in which any party achieves more than two-third of its Community-wide turnover.

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C 66, 02.03.1998, p. 25). To the extent that figures include turnover for the period before 01.01.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

### **III. MARKET DEFINITION**

7. The operation will result in two horizontally affected markets : (i) the market for emergency lighting systems and (ii) the market for professional lighting fittings. The operation will also vertically affect the markets for low-voltage electrical products sold in France.

#### **A. Emergency lighting systems**

##### ***A.1 Product market***

8. Emergency lighting systems are designed to provide a minimum level of lighting to allow for the safe evacuation of a building in the event that the main power fails and also mark the route to the nearest (emergency) exit.
9. In the Schneider/Legrand decision<sup>3</sup>, the Commission came to the conclusion that there is a separate market for emergency lighting systems as opposed to other safety and protection systems, such as fire detection, intruder detection systems and access control systems. The Commission also found that there are two possible alternative technological solutions in terms of emergency lighting systems, namely self-contained emergency lighting systems (“SCES”) and central power supply emergency lighting systems (“CPES”). Whereas CPES consists of integrated system of multiple luminaires connected to a single, centralised power source, SCES consists of stand-alone units, each containing a single luminaire and a battery.
10. The parties, argue that both systems are functionally interchangeable in terms of their end result, the emergency lighting provided.
11. However, it is not necessary to exactly define the relevant product market, since in any event the proposed concentration does not raise any competition issue as regards emergency lighting systems.

##### ***A.2 Geographic market***

12. In the Schneider/Legrand decision, the Commission concluded that the French market constitutes a relevant geographic market for the emergency lighting systems, but left open the definition for the remainder of the EEA market.
13. The parties submit that the market for emergency lighting systems is at least EEA-wide. They mainly argue that, even though variations exist in the translation of the European harmonised technical standards<sup>4</sup> in some Member States (including France and Spain), this only entails slight modifications to the products themselves and consequently does not constitute a real barrier to entry. Concerning national, non-compulsory quality marks (different from the European “EC” mark), such as the NF mark in France, the parties argue that the additional cost and delays involved in obtaining them are so small that they do not constitute a serious barrier to cross-border trade within the EEA.

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<sup>3</sup> Case N° IV/M.2283, 10 October 2001

<sup>4</sup> Council Directive 72/73/CEE on the harmonisation of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits (hereafter: “the Low Voltage Directive”) applies to emergency lighting systems with a voltage rating between 50 and 1,000 V for alternating current and between 75 and 1,500 V for direct current.

14. However, it is not necessary for the purpose of this case to exactly define the scope of relevant geographic market given that, in any event, the proposed concentration does not raise any competition concern with regard to the emergency lighting systems.

## **B. Professional light fittings**

### ***B.1 Product market***

15. The light fittings control the diffusion of the light and heat, ensure the delivery of the correct electricity characteristics and provide the optical assembly, which houses the light bulb. Professional light fittings are light fittings for non-residential use and include fittings for interior and exterior use.
16. In previous decisions<sup>5</sup>, the Commission concluded that professional light fittings constitute a distinct product market, and although it evoked a possible distinction between exterior and interior use lighting fittings, it did not take position on the existence of separate product markets.
17. The parties submit that the relevant product market is that for professional light fittings as a whole, mainly given the high degree of supply-side substitutability.
18. However, it is not necessary to define exactly the relevant product market, since in any event, the proposed concentration does not raise any competition concerns.

### ***B.2 Geographic market***

19. The parties submit that the relevant geographic market is at least EEA-wide, due to the increase in cross-border distribution of professional light<sup>6</sup> fittings. This contradicts a previous decision where the Commission concluded that this market was national in scope<sup>7</sup>. The parties argue that this decision, which is ten years old now, has been overruled by a more recent one adopted in 2000<sup>8</sup> in which the Commission noted that there was the beginning of a trend towards more cross-border distribution, although it did not take position on the relevant scope of the market.
20. In this case, however, it is not necessary to define exactly the scope of the geographic market since, in any event, the proposed concentration does not raise any competition concern.

## **C. Vertically affected markets**

21. Wendel enjoys joint control over Bureau Véritas, which in turn solely controls LCIE. LCIE is currently the only body with a licence to grant the French “NF” mark for low-voltage electrical products. While the NF mark, as the other national marks of quality, is generally not mandatory from a legal point of view, self-contained emergency lighting

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<sup>5</sup> Cases M.258 - CCIE/GTE and M.1876 – KKR/Wassall/Zumtobel

<sup>6</sup> The Low Voltage Directive applies to light fittings for use in lighting equipment with a voltage rating between 50 and 1,000 V for alternating current and between 75 and 1,500 V for direct current.

<sup>7</sup> Case M.258 – CCIE/GTE

<sup>8</sup> Case M.1876 – KKR/Wassall/Zumtobel

systems intended to be used in public places and sold in France have to display the NF mark<sup>9</sup>.

22. The parties acknowledge that there is a vertical link between LCIE and the activities of Legrand and Zumtobel, in that the low voltage electrical products sold by these two companies in France are, or may be, certified with the NF mark by the LCIE. Therefore, due to this vertical link, the markets for the sale in France of low-voltage electrical products, where the parties will be active through Legrand and Zumtobel, are affected by the proposed transaction. It can in fact be argued that LCIE could engage in discriminatory practises against Legrand's and Zumtobel's competitors as regards the granting of the NF mark.

#### **IV. ASSESSMENT**

##### **A. Emergency lighting**

23. The proposed concentration will not raise serious competition concerns as regards emergency lighting systems, whatever geographic market definition is retained.
24. On an EEA-wide market for emergency lighting systems as a whole (SCES plus CPES), the concentration leads to a combined market share of approximately [15-25%] (Zumtobel [0-10%] and Legrand [10-20%]). The main competitors include Cooper (market share in the range of [15-25]%) and Beghelli (market share in the range of [10-20]%).
25. On a EEA-wide minus France market for emergency lighting systems as a whole, the combined market shares of the parties would be lower, in the range of [10-20%] (Legrand [0-10%] and Zumtobel [5-15%]). Since Legrand holds a very strong position in the French market, the market shares of competitors, including Cooper and Beghelli, are higher than those indicated in the previous paragraph.
26. In case the market for emergency lighting systems should be defined as national in scope, the proposed concentration will result in combined market shares above 15% in Austria, France, Spain and the UK. However, in each of these countries, the increment is only limited.
27. In Austria, the combined market share of the parties would be in the range of [25-35%], with an increment of [0-10%]. Other competitors include CEAG, a subsidiary of Cooper, ([20-30%]) and Beghelli ([10-20%]). In France the combined market share would be in the range of [55-65%], with an increment of [0-10%]. Other competitors include Luminos [15-25%]), Kaufel ([0-10%]) and Schneider ([0-10%]). In Spain, the combined market share would be in the range of [30-40%], with an increment of [0-10%]. Other competitors include Normalux ([15-25%]), Daisalux ([15-25%]) and Zemper ([10-20%]). Finally, in the UK, the combined market share would be in the range of [25-35%], with an increment of [0-10%]. Other competitors include Thomas & Bett ([25-35%]) and Cooper ([10-20%]).
28. Should the relevant product market be defined as that of SCES, the proposed concentration will result in combined market shares above 15% in Austria, France, Spain and the UK with only limited increments.

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<sup>9</sup> Arrêté du Ministre de l'Intérieur of 02.10.1978 concerning SCES used in public places

29. In Austria, the combined market share of the parties would be in the range of [30-40%], with an increment of [0-10%]. Other competitors include CEAG ([10-20%]), Inotec ([10-20%]), Schrack ([0-10%]) and Beghelli ([0-10%]). The parties explain that over the past 3 years Zumtobel, while remaining the market leader, has steadily lost market shares, notably to the benefit of Inotec, which has entered the Austrian market in 1998. In this market, the merged entity will face competition from Cooper, the largest player in emergency lighting systems at the EEA level, through its subsidiary CEAG. In France, the combined market share of the parties would be in the range of [55-65%], with an increment of [0-10%]. In Spain, the combined market share of the parties would be in the range of [30-40%], with an increment of [0-10%]. In the UK, the combined market share of the parties would be in the range of [25-35%], with an increment of [0-10%].
30. Should the relevant market be defined as that of CPES, the proposed concentration will not result in any accretion of market shares.
31. Even though the combined market share of the parties would be high in some of above-mentioned country, one should note that the accretions of market shares will only be marginal or limited (from [0-10%] to [0-10%]). The proposed transaction will therefore not significantly alter the conditions of competition in the relevant market.
32. For the set above reasons, the Commission has reached the conclusion that the proposed concentration does not raise any serious competition concerns as regards the market for the emergency lighting systems, whatever market definition is retained.

#### **B. Professional light fittings**

33. The proposed concentration will not raise serious competition concern whatever market definition is retained.
34. On an EEA-wide market for professional light fittings as a whole (exterior plus interior), the parties' combined market would not exceed 15%. The same conclusion can be drawn in case the relevant product market were defined as the market for only exterior or the market for only interior professional light fittings.
35. On a national level, the proposed concentration will result in combined market shares in the market for professional light fittings as a whole (exterior plus interior) above 15% in Austria ([30-40%]), France ([15-25%]), Ireland ([15-25%]) Sweden ([15-25%]) and the UK ([10-20%]). The increments will only be limited, between [0-10%] in Sweden and [0-10%] in France ([0-10%] in Austria, [0-10%] in Ireland, [0-10%] in the UK).
36. Be the relevant product market defined as the market for exterior professional light fittings, the proposed concentration lead to an aggregated market share above 15% in Austria ([10-20%]), France ([30-40%]), Ireland ([30-40%]), Sweden ([30-40%]) and the UK ([15-25%]). Once again, the increments will only be limited, between [0-10%] in the UK and [0-10%] in France ([0-10%] in Sweden, [0-10%] in Austria and [0-10%] in Ireland).
37. Be the relevant product market defined as the market for interior professional light fittings, the parties' combined market shares will be above 15% in Austria ([35-45%]), Ireland ([10-20%]) Sweden ([10-20%]) and the UK ([10-20%]). The increments are only minimal between [0-10%] in Sweden and [0-10%] in Ireland ([0-10%] in Austria and [0-10%] in the UK).

38. It derives from above that the increments resulting from the proposed concentration are minimal in all the affected markets except for the French market for exterior professional light fittings, where the proposed concentration will result in a combined market share of [30-40%] with an increment of [0-10%]. However, Philips, the second-largest competitor with a market share of [25-35%], will continue to exert a significant constraint on the merged entity.
39. Given that in all cases the combination of market shares are only limited or even marginal, and that it remains credible competitors, the Commission has reached the conclusion that the proposed concentration does not raise serious competition concerns as regards the professional light fittings, whatever market definition is retained.

### **C. Vertical links**

40. As stated above, it could be argued that the parties could gain an advantage of the fact that Wendel (indirectly) controls LCIE, the certification body in France, on the one hand, and that both KKR and Wendel would jointly control Legrand and that KKR jointly control Zumtobel, on the other hand. Both Legrand and Zumtobel sell low voltage electrical products in France. LCIE is the only body which is entitled to award the French quality mark (the “NF” mark) to electrical products.
41. This link raises the question of whether LCIE could lose its impartiality as regards Legrand and Zumtobel by setting discriminatory practices against their competitors in the granting of the NF mark.
42. The parties submit that this concern is unfounded for the following reasons. Firstly, the LCIE is subject to strict regulatory control from the French authorities that could lead them to suspend or withdraw LCIE accreditation to deliver the NF mark in case it would not act independently from manufacturers. Such a behaviour would also lead to the termination of mutual recognition agreements by foreign certification bodies. Secondly, LCIE would not have any commercial interest in abusing its licence to grant the NF mark, since both Legrand and Zumtobel only generate a small amount of its turnover (in 2001, Legrand alone represents [0-10%] of LCIE’s turnover, Zumtobel less than [0-10%]). Thirdly, Wendel only jointly controls LCIE, together with Poincaré Investissement (“PI”), through Bureau Veritas in which they are bound by a shareholders’ agreement. It would not be in the interest of PI to favour Legrand or Zumtobel via LCIE since PI does not have any stake or interest in these companies. On the contrary, such behaviour may ultimately result in the withdrawal of LCIE’s accreditation and thus affect the value of PI’s investment. More generally it might seriously affect the credibility (and, therefore, the value) of LCIE and, of its direct parent, Veritas. Finally, even though LCIE would engage in discriminatory practises in favour of Legrand and/or Zumtobel, this would not prevent their competitors from obtaining the NF mark, since they can rely on tests achieved by foreign certification bodies to obtain this mark through the CENELEC Certification Agreement (“CCA”).
43. It has first to be stressed that the NF mark is not legally mandatory in order to sell low-voltage electrical products in France, except for the self-contained emergency lighting systems used in public places<sup>10</sup>. However, the Commission acknowledges that the NF mark constitutes one element of the commercial strategy of the manufacturers, because of its recognition by electrical contractors. This also follows from EdF, the French

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<sup>10</sup> Regulation of the French Ministre de l’Intérieur of 2 October 1978 concerning SCES emergency lighting systems used in public places



electricity producer, encouraging the use of the products having obtained this mark by delivering its Promotelec label only to those electrical installations where all devices display the NF mark. It has also to be recalled that LCIE is only responsible for the certification of the products and has no responsibility as to the definition of the standards themselves, which encompass the definition of the tests that have to be achieved to check whether a given product complies with the requirements set forth in the standard. Consequently, LCIE does not seem to enjoy a significant margin of discretion as regards the tests that have to be performed, nor the interpretation of the results of these tests.

44. It derives from this that should LCIE try to favour Legrand and Zumtobel, it would only be in a position to delay the granting of the NF mark to their competitors during a relatively short period of time by delaying the completion of the tests required or by setting administrative proceedings. The Commission estimates that this delay remains limited in time and that, in any event, LCIE could not refuse, without sound and objective reasons, to deliver the NF mark. Moreover, in case LCIE would discriminate against Legrand's and Zumtobel's competitors by delaying the completion of the tests or by setting administrative proceedings, this difficulty could be bypassed thanks to the CCA procedures that allows manufacturers to have their products tested by the other certification bodies participating in the CCA. CCA consists in a mutual recognition of standards and tests between all the participating bodies. Therefore, once a product has successfully complied to the tests of a certification body member of the CCA, the other bodies could not refuse to grant their national mark<sup>11</sup>, even though this recognition is not automatic and could probably be delayed during a limited period of time by setting administrative proceedings.
45. Finally, it has to be recalled that in the Schneider/LeGrand, the Commission found that the rivalry between Schneider and Legrand was the main driver of competition in the French markets for the low-voltage electrical products. This rivalry would not be affected by the creation of the vertical link that will result from the proposed transaction since Schneider, as well as the other manufacturers active in the French market, have already obtained the NF mark for their products. As regards the products for which the NF mark could be sought in the future, it has to be stressed that (i) this mark is not legally mandatory for all the low-voltage electrical products (except for the self-contained emergency lighting systems used in public places) and (ii) the trade marks of those manufacturers which have been for long solidly established on the French market, together with the EC mark, are, to a growing extent, regarded by consumers as a sufficient guarantee of the quality, safety and reliability of the products. The importance of the trade marks of the manufacturers in relation to the functioning of the market is one of the major conclusions reached by the Commission in the Schneider/LeGrand decision<sup>12</sup>.
46. As regards new entrants, the ability to establish a reputable trade mark on such markets, together with the access to wholesalers, constitute their real challenge and, as such, the real possible entry barrier. The Commission acknowledges that the NF mark is one of the element which contributes to the establishment of the reputation of a trade mark. Should LCIE delay the granting of the NF mark to the products of such a new entrant, this would not affect it substantially, since the low-voltage electrical markets are mature markets where building a position takes a long time. Moreover these markets are not

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<sup>11</sup> CCA, Part A, article 1(5)(1)

<sup>12</sup> See points 489-505 and 647-652

seasonal ones, so that there is no absolute need to obtain the NF mark within a short delay or before a certain dead-line. Finally, this delay would not, in any case, prevent new entrants from entering the French market inasmuch as they are able and willing to perform the significant commercial and marketing investments required in order to build such a position.

47. In conclusion, assuming LCIE would discriminate against Legrand's and Zumtobel's competitors in the granting of the NF mark, this would not confer to Legrand nor Zumtobel such a substantial competition advantage that effective competition would be significantly impeded in the French market within the meaning of Article 2(3) of the Merger Regulation, even in the product markets where the Commission has found in the Schneider/Legrand decision that Legrand holds a dominant position<sup>13</sup>.

## **V. CONCLUSION**

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

For the Commission

Signed by Franz FISCHLER  
Member of the Commission

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<sup>13</sup> See Case IV M.2283, 10 October 2001, points 700, 715, 719.