

***Case No COMP/M.4949 -
SONEPAR /
HAGEMEYER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/02/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8-II-2008

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4949 - Sonepar/ Hagemeyer
Notification of 7.1.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 7/1/2008, the Commission received a notification of a proposed concentration pursuant to Article 4 EC Merger Regulation by which the undertaking Sonepar SA ("Sonepar", France) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of all the business activities of the undertaking Hagemeyer N.V. ("Hagemeyer", The Netherlands) in Austria, Sweden, a small part of its activity in Germany as well as its activities in the United States, Mexico, Canada, Australia, China, South-East Asia (Singapore, Malaysia, Thailand) and Switzerland to the exception of the Agencies/Consumer Electronics business of Hagemeyer, by way of purchase of shares.

I. THE PARTIES

2. **Sonepar** is a French family-owned group active worldwide in the wholesale distribution of electrical products and installation material. Sonepar's worldwide sales in 2006 amounted to € 9.4 billion, out of which [...] were achieved in the EEA and € 2.4 billion in France.
3. The **Hagemeyer assets** that Sonepar proposes to acquire through the planned transaction are the whole activity of Hagemeyer in Austria and Sweden, 6 Hagemeyer outlets in Germany as well as the Hagemeyer activities in the United States, Mexico, Canada, Australia, China, South-East Asia (Singapore, Malaysia, Thailand) and Switzerland to the exception of the Agencies/Consumer Electronics business. Hagemeyer is a Dutch company also active in the wholesale distribution of installation and more particularly of electrical

¹ OJ L 24, 29.1.2004 p. 1.

equipment. The Hagemeyer assets subject to the transaction achieved a global turnover of EUR 2.7 billion out of which [...] were achieved in the EEA.

II. THE OPERATION AND THE CONCENTRATION

4. On 23 October 2007, Sonepar entered into an agreement ("*the Agreement*") with Rexel SA, pursuant to which Rexel would launch a public takeover bid over Hagemeyer and – subject to a successful outcome of this takeover bid – Rexel would transfer parts of Hagemeyer to Sonepar. Sonepar and Rexel thereby agreed that Sonepar would acquire from Rexel Hagemeyer's activities in Austria, Sweden, a small part of its activity in Germany², as well as the Hagemeyer activities outside the EU, as outlined above.
5. The Agreement between Sonepar and Rexel covers the details of the break-up of the Hagemeyer assets, as well as the day-to-day management of the assets during the transitional period after closing of the public offer until the date when the legal transfer of ownership of the relevant assets to Sonepar will have been completed.
6. In this regard, the Commission finds that there is no lasting acquisition of control by Rexel over those Hagemeyer assets which will ultimately be transferred to Sonepar, since this transfer has been agreed in a legally binding way.³
7. Moreover, by a side-letter to this Agreement of the same date, Sonepar and Rexel agreed that they would sell to each other certain of their own activities, subject to the successful outcome of Rexel's takeover bid for Hagemeyer. Among others, they agreed that Rexel would transfer all of its activities in Germany and Luxembourg (Rexel Germany) to Sonepar⁴.
8. Since Sonepar will gain sole control on a lasting basis over the Hagemeyer assets destined for them, the transaction constitutes a concentration within the meaning of Article 3 (1) EC Merger Regulation.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Sonepar: EUR 9,451 million; Hagemeyer assets: [...]). Each of them also has a Community-wide turnover in excess of EUR 250 million (Sonepar: [...], Hagemeyer

² The six Hagemeyer branches located in Stäbelow (near Rostock), Barbüttel, Glinde, Kiel, Bremen and Gütersloh.

³ Cf. para. 31 of the Consolidated Jurisdictional Notice and the parallel case M.4963 – Rexel/Hagemeyer. It should be noted that on the basis of the information available to date it cannot be excluded that – despite the fact that Rexel, Sonepar and Hagemeyer agreed to provide their best efforts to make the necessary legal arrangements for the assets in Sweden, Austria and the six German branches to be transferred to Sonepar within 12 months – (i) it could take more than 12 months to transfer those assets, or (ii) that some entities destined for Sonepar would finally not be transferred. Rexel has explicitly recognized in the notification to the Commission of its acquisition of the remaining Hagemeyer assets (case COMP/M.4963 Rexel/Hagemeyer) that it will have to re-notify the entire transaction should one or more of Hagemeyer's activities destined to Sonepar not have been transferred to the latter within 12 months after the closing of the public takeover bid. Consequently the present decision, as it concerns the assets as described above, will no longer be effective.

⁴ Cf. the parallel case COMP/M.5029 – Sonepar/Hagemeyer.

assets [...]). In addition, none of the undertakings concerned achieves two-thirds of its Community-wide turnover in one Member State.

IV. COMPETITIVE ASSESSMENT

10. The proposed transaction concerns the wholesale distribution of electrical products to professionals. More specifically, wholesalers such as the parties buy these products from manufacturers and resell them to operators which either integrate them within a specific building or industrial project or install them for their own customer or directly resell them.
11. For historical reasons, the range of products distributed by the parties may vary across the EEA territory (see below). The main part of the parties' revenues is generated by the wholesale of electrical products including i) electrical installation equipment (panels, automation and transformers), ii) cables, iii) lighting sources and equipment and iv) communication and security products (detection, surveillance, access control, voice and data transmission equipment). In some countries, the parties distribute also HVAC products (heating, ventilation and air conditioning products), household and consumer electronic goods (white and brown products) and some safety products for professionals.

1. Relevant product markets

12. The activities of the parties in terms of product market approach can be addressed from two perspectives: downstream markets (sales of electrical products by wholesalers to their clients) and upstream markets (procurement of electrical products by wholesalers from suppliers).

Downstream markets

13. In previous cases, the Commission considered that the wholesale distribution to professionals could be distinguished from other forms of distribution and in particular retail distribution such as DIY stores⁵. Indeed, whilst retailers may carry the basic range, they do not compete with wholesalers for immediate access to a wide range of electrical products⁶ and do not provide a high level of expertise or facilitated payment conditions. The parties agree with this approach which was also confirmed by the market investigation. Indeed, in the Member States where the transaction will lead to affected markets, i.e. Austria and Sweden, the vast majority of customers indicated in their response to the market investigation that they never purchased electrical products from retailers and only few submitted that they would only occasionally resort to retailers in case of emergency need.
14. The parties and their competitors do not always distribute the same range of products in all EEA countries. In Sweden, the main competitors of the parties distribute, in addition to electrical products, installation materials such as heating and plumbing products, but not household electronic goods. Therefore the notifying party submits that, also in line with a Commission's previous decision⁷, the material scope of the relevant market

⁵ Decisions IV/M.990 Hagemeyer/ABB Asea Skandia of 7 October 1997 and COMP/M.2034 Hagemeyer/WF Electrical of 17 July 2000.

⁶ For instance in Austria wholesalers are able to offer 250,000 to 1 million articles.

⁷ Decision COMP/M. 4050 Goldman Sachs/Cinven/Ahlsell of 6 January 2006.

should encompass not only electrical products but also heating and plumbing products as well as tools and machinery. In any case the exact definition of the relevant product market in Sweden can be left open since even adopting the narrowest possible product market definition effective competition would not be significantly impeded.

15. As regards a possible further delineation of the products sold at the wholesale level, the parties consider that it is not relevant. They submit that wholesalers have to respond to the demand of customers which need to cover several stages of the installation process and provide a one-stop shopping facility. Therefore each wholesaler carries a broad product range sourced from a large number of manufacturers. This is in line with previous findings in *Hagemeyer/WF Electrical* and confirmed by the findings of the market investigation which show that customers are awaiting from the wholesaler to offer a wide range of electrical products.
16. The notifying party considers that the contemplated transaction should be assessed on a product market which includes direct sales from manufacturers of electrical products to the parties' customers. It argues that there are overlaps in terms of brand and format between the products sold by manufacturers and those sold through wholesalers and that the same customers are targeted⁸. Sonepar contends that the prices charged by wholesalers are directly subject to competitive pressure from the price level at which sales by manufacturers are achieved. Therefore Sonepar submits that direct sales and sales through wholesalers belong to the same product market.
17. In *Hagemeyer/WF Electrical*, the Commission already expressed doubts regarding the argument that direct sales by manufacturers should be included in the same market as sales by wholesalers since, in particular wholesalers offer a wide range of products from different manufacturers whereas manufacturers sell only their own products and compete with wholesalers only when orders are large or subject to repeated business.
18. These doubts are strengthened by the notifying party's submission on the role of the wholesaler which shows that its main functions considerably differ from those of the manufacturers. Indeed, the notifying party submits that wholesalers are "middlemen" between manufacturers and professional users which have to fulfil four main different functions: logistics (availability of the products), pricing, product management (following market trends to offer the suitable product portfolio consisting of a thousand of fast moving references) and promotion (specific services to customers such as 24/7 delivery, electronic purchasing, credit facilities, etc.). Moreover, wholesalers are better placed than manufacturers to serve small orders (since manufacturers face higher process costs when they deal with small quantities). These characteristics are not contested by the notifying party. Furthermore, according to Sonepar, wholesalers have the ability to provide additional financing services such as favourable payment terms.
19. While manufacturers may have some competitive advantages such as offering specialised and qualified technical support, the market investigation confirmed that they are not competing with wholesalers for the same customers and/or for the same supply of electrical products. Some customers indeed explained in their response to the market investigation that they sometimes need to purchase from manufacturers in order to get specific products with higher technical content. However, as regards more standardized

⁸ Sonepar estimates the proportion of sales of electrical products achieved directly by manufacturers at [10-20%] of the overall sales in Sweden, [40-60%] in Germany and [70-90%] in Austria

products, they can in fact not consider buying from manufacturers, since most manufacturers require a certain amount of minimum order and are often not as flexible as wholesalers in terms of coverage of the country and delivery times.

20. More particularly, customers in the affected national markets (Austria and Sweden) generally confirmed that direct sales should be distinguished from sales through wholesalers. In Sweden, they indicated that wholesalers provide the immediate availability, fast delivery and easier access which are necessary in their day-to-day business. Some customers also mentioned that due to the limited size of their orders, they would get better prices and conditions by purchasing through wholesalers. This has been confirmed by one of the major competitors of the parties which submitted that manufacturers may occasionally supply products directly in nation-wide, very large projects in terms of value.
21. In Austria, although the proportion of direct sales is significant, the majority of customers indicated that they source standard products, such as standard cable, installation material for electrical distribution, as well as - to some extent - lighting, white and brown goods from wholesalers and not directly from manufacturers. They see differences between wholesalers and manufacturers as regards the number of products that is available, the choice of products /brands, the after sales service, installation advice and price. Only if they need specific products (for example special cable, large switch boards) or material for large construction projects, like a stadium or a large office building, they consider buying directly from manufacturers. They also indicated that there is a minimum order amount for direct sales from manufacturers. Thus, the smaller the customer, the less it is likely that it can source certain products directly from a manufacturer. This has also been confirmed, for example, by manufacturers of cable and power distribution material, as well as other wholesalers in Austria.
22. Furthermore, market participants confirmed that there are large differences between manufacturers and wholesalers in terms of brands of products available (since wholesalers can offer the whole range of products needed by end-consumers), logistic and after-sales service, installation advice or prices.
23. In the light of the above, the Commission therefore considers that the supply of electrical (or installation) products by wholesalers constitutes a distinct product market (not including direct sales by manufacturers or retailers).

Upstream markets

24. Upstream markets concern the procurement of electrical products by wholesalers from manufacturers. The notifying party submits that the markets for procurement include the sales of such electrical products to a variety of customers including wholesalers but also DIY retailers. This is in line with past Commission decisions concerning the area of wholesale distribution⁹.
25. The Commission's practice has been to delimit procurement markets by distinguishing product families or ranges¹⁰. This is due to the fact that suppliers generally manufacture a limited number of categories of products which are subject to very different

⁹ See for example decision COMP/M.3184 Wolseley/Pinault bois et matériaux of 3 July 2003.

¹⁰ Decision COM/M.3184 Wolseley/Pinault bois et matériaux

competitive conditions. Hence the parties provide estimates of their shares in the five main categories of electrical products that they distribute, namely cables, lighting, installation materials, HVAC and communication and security products.

2. Relevant geographic markets

Downstream markets

26. The notifying party considers the wholesale markets of electrical products to be national in scope. Indeed, they submit that the parties to the contemplated transaction as well as their competitors adopt a national distribution strategy in terms of available product range, pricing, marketing strategy and general pricing policy. They also point out that transport costs of electrical products are not an issue since many electrical products are light or added/value materials, their prices being therefore not adversely affected by transport costs or at least not to a large extent¹¹.
27. The Commission has already considered that an assessment of these markets at a national level was appropriate in the light of these factors¹². However, it also examined if other aspects pointed to the relevance of narrower geographic markets. When it appears that immediacy, proximity and local delivery are viewed as important by the professional customer concerned, the Commission typically considers the size of the typical customer catchment areas that is, the radius of the average travel distance that customers usually undertake to buy their supplies. The parties submit that the catchment areas of different outlets in the affected markets largely overlap, thus creating a continuous offer on the national scale and confirming the national scope of these markets¹³.
28. The parties further contend that a definition of national markets is particularly appropriate for the wholesale distribution of electrical products given the importance of on-site deliveries (to the customers' premises or a worksite they designate) as opposed to "Over The Counter" (OTC) sales where customers have to travel to the local branch. Sonepar puts forward that in Sweden only [10-20%] of sales are made with customers physically coming to the branch and in Austria approximately [70-100%] of the orders would be distant, namely phone, fax, mail, tendering or by web-shopping.
29. These considerations were broadly confirmed by market participants in Austria and Sweden. In light of the above, the Commission will assess the transaction on the basis of national markets for wholesale distribution of electrical products with respect to Austria and Sweden.

Upstream markets

30. According to the parties supplies of electrical products by manufacturers to their customers (including wholesalers) are still made mainly on a national basis due to

¹¹ Sonepar estimates transport costs to represent around [0-5%] of the turnover generated by the sales of electrical products.

¹² COMP/M.2034 Hagemeyer/WF Electrical

¹³ For the main affected markets (Sweden and Austria), the parties have submitted maps showing the overlap in catchment areas and the fact that other players are active in the same areas than the parties.

national specificities as regards product standards, installation rules and habits, labels or prices. This has been acknowledged by the Commission in previous cases¹⁴.

31. In the course of the market investigation, some suppliers pointed out to the existence of pan European schemes for rebates on the basis of total sales which would exist with some of the largest wholesalers, including the parties, which may speak in favour of a larger than national market definition. However this element does not alter the conclusion that the procurement markets are still national, as the market investigation has also confirmed the notifying party's submission as regards the above mentioned considerations. Suppliers of the parties have indicated that commercial negotiations were also carried out on a national basis, with discount and rebates discussed country by country.

3. Competitive assessment

32. In the EEA, Sonepar will acquire Hagemeyer assets in Austria, Sweden and 6 outlets in Germany. On the basis of the above market definitions, the proposed transaction will give rise to affected downstream markets in Austria and Sweden¹⁵ and affected upstream markets in Sweden¹⁶.

Austria

33. In Austria, Sonepar will post-merger have a market share of approx. [15-25%] (increment through acquisition: [5-10%]) and will become the second biggest wholesaler behind Rexel (approx. [30-40%]), and ahead of Schrack ([10-20%]), Mitegro ([0-10%]), TEG ([0-10%]) and Edmundson ([0-10%]). These competitors all offer a similar range of products that of the parties with an average number of different references amounting to [10.000-30.000], except for Rexel and Schrack which offer about [30.000-50.000] references
34. The market investigation has broadly confirmed this market structure. It has also revealed that there remain a sufficient number of other credible supply alternatives for customers in the region where Hagemeyer's outlets are located, i.e. in the middle and eastern parts of Austria, including supplies by other wholesalers, as well as, to some extent, direct sales by manufacturers¹⁷.
35. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the common market for what regards the Austrian market for the wholesale of electrical products.

¹⁴ For instance in decision COMP/M.2283 Schneider/Legrand of 10 October 2001.

¹⁵ In Germany, where Sonepar will acquire 6 Hagemeyer outlets, the new entity would have a combined market share of [10-20%] with an overlap of less than [0-5%].

¹⁶ In Austria and in Germany, the parties' market share would not exceed [5-15%] on any of the procurement markets.

¹⁷ The Notifying Party had argued that direct sales of electrical products by manufacturers and sales by wholesalers belong to the same product market in Austria. Direct sales indeed account for a large part of sales of electrical products in this Member State and manufacturers indeed exercise competitive pressure on wholesalers, but the direct sales are not entirely substitutable for sales by wholesalers (and thus do not belong to the same product market), since they only apply to certain products and larger projects, cf. above at para. 20.

Sweden

Wholesale markets

36. In Sweden, the proposed transaction will lead to affected markets regardless of whether the scope of the product market includes installation products or only electrical products. The table below shows the parties' and their main competitors' market shares for both alternative market definitions.

Sweden 2006	Wholesale distribution of installation products		Wholesale distribution of electrical products	
Company	Sales (M€)	Market share	Sales (M€)	Market share
Sonepar	[0-500]	[0-10%]	[0-500]	[10-20%]
Hagemeyer	[500-1000]	[10-20%]	[0-500]	[20-30%]
Combined	[500-1000]	[20-30%]	[500-1000]	[35-45%]
Ahlsell	[500-1500]	[30-40%]	[0-500]	[10-20%]
Rexel	[0-500]	[0-10%]	[0-500]	[10-20%]
Solar	[0-500]	[0-10%]	[0-500]	[10-20%]
Nea	[0-500]	[0-10%]	[0-500]	[0-10%]
Malmbergs	[0-500]	[0-10%]	[0-500]	[0-10%]
Others	[500-1500]	[10-20%]	[0-500]	[0-10%]
Market	[3000-4000]		[1000-2000]	

37. Pre-merger, Hagemeyer is the market leader in the wholesale of electrical products in Sweden. By acquiring Hagemeyer, Sonepar, so far the fifth market player, would further enhance this leading position with a combined market share of [35-45%]. The post merger HHI is [<1500] with an increase of [<400]. On an hypothetical wider market for installation products, the combined entity would have a market share of [20-30%] (Sonepar, [0-10%]; Hagemeyer, [10-20%]), the market leader being Ahlsell with a market share of [30-40%].
38. Post merger, the new entity would still face competition from three significant market players: Ahlsell ([10-20%]), a Swedish company, active in the Nordic countries¹⁸ in the wholesale of electrical products as well as heating & plumbing, tools & machinery, construction and refrigeration, Rexel ([10-20%]) and Solar ([10-20%]), a Danish wholesaler of electrical, ventilation and HWS (heating, water and sanitary) components active in Nordic countries¹⁹ as well as in Netherlands, Germany and Poland.
39. Data collected during the market investigation²⁰ shows, as reflected in the table below, that these competitors all offer a similar range of electrical products with a number of references equivalent to that of Sonepar and Hagemeyer and have a comparable network of outlets covering the whole country.

¹⁸ Denmark, Finland, Sweden and Norway.

¹⁹ Denmark, Finland, Sweden and Norway

²⁰ Response to questions 6, 16 and 18 of the "Questionnaire to competitors" sent on 8.01.2008.

	Number of references	Number of outlets
Sonepar	[10.000 – 30.000]	[20-30]
Hagemeyer	[70.000 – 90.000]	[40-50]
Ahlsell	[80.000 – 100.000]	[70-80]
Rexel	[30.000 – 50.000]	[30-40]
Solar	[15.000 – 55.000]	[40-50]

40. In response to the market investigation, customers indicated that there was no unavoidable electrical wholesaler in Sweden and that wholesalers active in Sweden could all compete for all types of contracts or projects. Moreover the main competing wholesalers (Ahlsell, Rexel and Solar) confirmed that they were covering the whole country through their network of outlets. Furthermore Ahlsell and Solar were named as credible alternative wholesalers, Ahlsell being mentioned by a majority of customers as the closest competitor to Hagemeyer.
41. Therefore, and despite Sonepar's increased leading position on the Swedish market for the wholesale distribution of electrical products, it is unlikely that the proposed concentration would give rise to concerns with regard to non-coordinated effects. Furthermore, for the reasons detailed below, the Commission considers that it is also unlikely that the proposed merger would create anti-competitive coordinated effects in the Swedish markets for wholesale distribution of installation products and electrical products.
42. First, market shares do not suggest prima facie a symmetrical duopoly consisting of the new entity and Ahlsell on the market for the wholesale distribution of electrical products. Second, as regards the market for the wholesale distribution of installation products, although there tends to be more symmetry between their market shares, this does not fully reflect the market structure. Indeed, Ahlsell achieves approximately 75% of its turnover with other installation products than electrical products, whereas it is exactly the opposite for the combined entity. There is therefore a clear difference in the profiles, strategies and incentives of these companies. Finally, post merger, in all catchment areas around Sonepar's outlets, the new entity will never find itself in competition only with Ahlsell.
43. In view of the absence of concerns raised by competitors as well as by the vast majority of customers and the fact that there will remain strong competitors such as Ahlsell, Rexel and Solar, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the common market for what regards the Swedish markets for the wholesale of electrical products and for the wholesale of installation products.

Procurement markets

44. As regards the upstream procurement markets in Sweden, the notifying party submits that the proposed transaction leads to affected markets as shown in the table below.

Electrical procurement market in Sweden 2006	Market size M€	Sonepar		Hagemeyer		Combined Market share (%)
		Purchases (M€)	Market share (%)	Purchases (M€)	Market share (%)	
All electrical products	[2000-3000]	[0-500]	[0-10%]	[0-500]	[5-15%]	[10-20%]
Cables	[500-1000]	[0-100]	[0-5%]	[100-200]	[15-25%]	[20-30%]

Lighting	[0-500]	[0-100]	[5-15%]	[0-100]	[10-20%]	[10-20%]
Installation materials	[500-1500]	[0-500]	[0-10%]	[0-500]	[10-20%]	[10-20%]
Communication and security	[0-500]	[0-100]	[5-15%]	[0-100]	[0-10%]	[15-25%]

45. As shown in the table above, post merger the market position of the new entity in the procurement markets will remain limited, not exceeding [20-30%] under any assumption of the relevant product market. The change brought about by the transaction is also small as reflected by the HHI delta comprised [<200].
46. On the supply side, the notifying party submits that Sonepar and Hagemeyer face large and powerful manufacturers that would prevent the combined entity from exerting any buying power²¹. On the demand side, competitors to Sonepar and Hagemeyer, such as wholesalers and retail Do It Yourself chains and distant mail order selling chains that sell electrical products at retail level account for a significant share of the purchases of electrical products in Sweden.
47. In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the common market for what regards the Swedish markets for the procurement of electrical products.

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 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

Neelie KROES
Member of the Commission

²¹ According to the notifying party, Sonepar's five main suppliers of cables represent almost [80-90%] of its total cable purchases, [50-60%] of its installation material purchases and [40-50%] of its lighting products purchases.