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***Case No IV/M.936 -  
SIEBE / APV***

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

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Article 6(1)(b) NON-OPPOSITION

Date: 16/06/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16/06/1997

PUBLIC VERSION

MERGER REGULATION  
ARTICLE 6(1)(b) DECISION

To the notifying parties:

**Subject: Case No IV/M. 936 - Siebe/APV**

Notification of 14 May 1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 14 May 1997 Siebe plc ("Siebe") notified to the Commission a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, by which Siebe plc acquires within the meaning of Article 3 (1) (b) of the Regulation control of the whole of APV plc ("APV") by way of a public offer for shares.

**I The Parties**

2. Siebe is a UK-based engineering group. The companies in the group, of which there are more than 150 across the world, design and manufacture temperature and appliance controls, process automation and building control systems, electronic power controls and engineered industrial equipment.
3. APV is a UK-based supplier of equipment and services to the food, beverage and related industries.

**II The Concentration**

4. The concentration involves the acquisition by Siebe of sole control of the whole of APV by way of a recommended public offer. As at 15 May 1997, when the formal offer to shareholders was made, the Siebe group owned or had received irrevocable undertakings in respect of approximately 9.8% of APV's issued ordinary share capital.

### **III Community Dimension**

5. After adjustments to Siebe's turnover to reflect the full contribution of acquisitions, disposals made, and new joint ventures entered into, during Siebe's most recent financial year ended 5 April 1997; and after making similar adjustments in respect of APV's turnover for its most recent financial year ended 31 December 1996, the combined world-wide turnover of the parties was in excess of ECU 5 billion.
6. The Community-wide turnover of each of Siebe and APV exceeds ECU 250 million, and both of the undertakings concerned do not achieve more than two-thirds of their Community-wide turnover in one and the same member state.
7. The combined turnover of the undertakings concerned in the territory of the EFTA States does not equal 25% or more of their total turnover in the EEA territory, and neither of the undertakings concerned has turnover exceeding ECU 250 million in the territory of the EFTA States.

### **IV Compatibility with the Common Market**

#### **A. Relevant Product Market**

8. The notifying party proposed that the appropriate product market for assessment of the notification was the market for industrial process control equipment. In an earlier decision, the Elzag Bailey/.Hartmann & Braun case (Case No IV/M.670) the Commission considered whether it was appropriate to divide the product categories further within this broad sector, but as it was not necessary to decide the point for the purposes of that decision, the question was left open.
9. The possible sub-divisions envisaged in the earlier decision were into: (a) process control instruments sold either to end users or system integrators; (b) central control units sold predominantly to end users; (c) process control field or measurement instruments; and (d) control valves and valve instruments. Of the third parties consulted who offered views on this point, most believed there was already, or was developing, a single market for industrial process control equipment, and that sub-divisions along the lines suggested were becoming less important.
10. It was pointed out that in practice the overall designer or supplier of a control system had certain options and choices about what types of control or measuring instruments to use within the system and where. Indeed, customers could insist as part of the design specification on particular instruments or valves being used in the system, whether or not they would have been the natural choice of the person responsible for the design or supply of the complete system.

#### **B. Relevant Geographic Market**

11. It had been suggested by the notifying party that the appropriate geographic market definition for industrial process control systems was at least EEA-wide in geographic scope, if not global. This appears to be supported by many, though not by all third party respondents. However, as the assessment of the case does not turn on the geographic market definition, the question can be left open.

## C. Preliminary Assessment

### Horizontal overlap

12. Siebe focuses, through its Foxboro subsidiary, on industrial process control systems, and is not involved in the manufacture or supply of industrial process equipment. APV's principal business is the supply of process equipment and systems for customers such as dairies and breweries. APV typically supplies whole process equipment systems on a turnkey basis, buying in from third parties the components it does not manufacture in-house. The principal area of overlap is therefore in the area of process control systems.
13. At a greater level of detail APV's activity in the process control system market is limited to software sales, and the manufacture of hygienic stainless steel valves, [...]¹. APV does not manufacture and sell to end-users process control field or measurement instruments, nor central control units. Neither does APV manufacture and sell process control field or measurement instruments.

### Industrial process control systems

14. If the market is taken to be that for industrial process control systems as a whole, and defined at EEA level, then Siebe has a market share of [...] and APV a share of [...]³ The parties' shares of a global market would be [...] and [...]⁵ respectively. If markets were defined at national level within the EEA the share of the parties would rise in some national markets, but not above 15% in any individual national market.
15. The notifying party has also provided figures based on narrower market definitions along the lines of the sub-categories discussed in the Eltag Bailey/Hartman case. On this basis, the notifying party submits even if there were separate national product markets for each sub-segment in which there is an overlap (the market for industrial process control systems taken as a whole, or sub-segments based on central control units for industrial process systems or process control valves,) the highest aggregate share of the undertakings concerned for any product market would be less than 15% in any national market. On this basis no competition concerns arise, and the exact product market definition can be left open.

### Vertical relationships

16. Although Sieve and APV sell their products directly to end users, APV is a potential customer of process control systems and products supplied by Siebe. However Sieve does not have 25% of the overall European process equipment

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¹ Deleted business secrets.

² Less than 10%.

³ Less than 10%.

⁴ Less than 10%.

⁵ Less than 10%.

control market nor of any of the product segments identified, and therefore no competition concerns arise.

### Conclusion

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

For the Commission,