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Press and Information

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Judgment of the Court of First Instance in Case T-351/03

Schneider Electric SA v Commission of the European Communities

SCHNEIDER MUST BE PARTIALLY COMPENSATED FOR LOSS SUSTAINED AS A RESULT OF THE ILLEGAL PROHIBITION OF ITS MERGER WITH LEGRAND

The grave and manifest failure by the Commission to have regard to Schneider's rights of defence constitutes a sufficiently serious breach of Community law to confer such a right

Schneider Electric and Legrand are two large French industrial groups, the former active in the electrical distribution, industrial control and automation sectors, and the latter active in the area of electrical equipment for low-voltage installations.

After it had been agreed that Schneider would acquire control of Legrand by means of a public exchange offer for shares (the offer), the two undertakings formally notified the Commission of their proposed merger on 16 February 2001, in order to obtain a declaration that the transaction was compatible with the common market.

Subsequent to Schneider's acquisition of 98% of the capital of Legrand on close of the offer in August 2001, the Commission, by decision of 10 October 2001, declared the merger to be incompatible with the common market, on the ground, inter alia, that the effect of the merger was significantly to impede effective competition in the French sectoral markets concerned.

Since Schneider had implemented a merger which was subsequently declared incompatible with the common market, on 30 January 2002 the Commission adopted a second decision ordering Schneider to divest itself of Legrand.

Schneider brought an action for annulment of each of those two decisions. In anticipation of the possible dismissal of those two actions, Schneider prepared its divestiture of Legrand and on 26 July 2002 concluded a contract of divestiture with the consortium Wendel/KKR which had to be executed by 10 December 2002 at the latest.

By judgments of 22 October 2002, the Court of First Instance annulled the prohibition decision and, consequently, also the divestiture decision, which was a measure in implementation of the prohibition decision. The Court held that the Commission had failed, in the prohibition decision, to have regard to Schneider's rights of defence, since the Commission had advanced for the first

time, in that decision, an objection to the merger which alleged ‘buttressing’, in the French sectoral markets, of Schneider’s dominant position in the electrical panel-board components sector and Legrand’s leading position in the downstream electrical equipment segments.

The merger control procedure, which was resumed by the Commission the day after the Court annulled its decisions, was closed by the Commission on 13 December 2002, after the persistent doubts which it expressed as to whether Schneider’s corrective measures were adequate to render the merger compatible with the common market had led Schneider to abandon the operation and to execute the contract of divestiture with Wendel/KKR on 10 December 2002.

Subsequently Schneider brought an action for damages before the Court of First Instance, with the aim of obtaining compensation for the loss which it claimed to have suffered as a result of the illegality of the prohibition decision, as found by the Court on 22 October 2002.

First, the Court points out that **for the Community to incur non-contractual liability there must have been unlawful conduct on the part of the Community’s institutions, the criterion being whether there was grave and manifest disregard of the limits of their powers of assessment.**

The purpose of **defining the threshold** at which the Community may incur non contractual liability is to protect the latitude and discretion which, in the public interest, the Community competition regulator must enjoy, both in its policy decisions and in its appraisal and application of relevant provisions of Community law, while ensuring that the cost of the consequences of flagrant and inexcusable failings does not fall on third parties.

The illegalities vitiating the prohibition decision

The infringement of Schneider’s right to be heard, before adoption of the prohibition decision, on the objection of reciprocal ‘buttressing’ of the respective positions of Schneider and Legrand deprived Schneider at the time of any possibility of knowing that there was no prospect of obtaining a declaration that the merger was compatible, unless it submitted corrective measures which were capable of reducing or eliminating that ‘buttressing’.

No justification or explanation for that infringement of the rights of the defence can be found in the particular constraints to which the services of the Commission were in fact subject.

The Court concludes that that illegality, of which neither the existence nor character are disputed by the Commission, entails an obligation to make compensation for the harmful consequences.

The Court rejects, however, Schneider’s claim that there are other defects in the merger control procedure.

On the loss eligible for compensation

The Court holds that the illegality **vitiating the decision of incompatibility confers on Schneider a right to compensation in respect of two categories of financial losses incurred by it.** The first comprises the expenses incurred by Schneider relating to its participation in the resumed merger control procedure which was undertaken by the Commission following the annulments pronounced by the Court on 22 October 2002. The second represents the reduction in the divestiture price which Schneider had to concede to Wendel/KKR in order to obtain a postponement of the execution of that divestiture. Two-thirds of the latter loss is to be compensated, since the Court considers that Schneider had itself contributed to its own loss by assuming the real risk that the merger would subsequently be declared incompatible and that resale of the shareholding in Legrand would be the inevitable consequence.

The parties must inform the Court of the amount of the first category of loss within a period of three months from the date of delivery of the judgment. The second category of loss shall be assessed by an expert.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: ES CS DE EL EN FR IT HU PL PT RO SK SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-351/03>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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Pictures of the delivery of the judgment are available on EbS "Europe by Satellite", a service provided by the European Commission, Directorate-General Press and Communications, L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249 or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956