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Judgment of the Court of Justice in Case C-440/07 P

Commission v Schneider Electric

**THE COURT SETS ASIDE THE JUDGMENT OF THE COURT OF FIRST INSTANCE
IN SO FAR AS IT ORDERED THE COMMUNITY TO MAKE GOOD THE LOSS
CLAIMED BY SCHNEIDER AS A RESULT OF THE REDUCTION IN THE SALE
PRICE OF LEGRAND**

The Community must, however, pay compensation to Schneider to cover the costs incurred in respect of its participation in the resumed merger control procedure

Schneider is a company which manufactures and sells products and systems in the electrical distribution, industrial control and automation sectors, while Legrand produces and sells electrical equipment for low-voltage installations. On 16 February 2001, the two French companies notified the Commission of a proposal whereby Schneider would acquire control of Legrand by means of a public exchange offer (the offer).

Following the acquisition by Schneider of 98.7% of the capital in Legrand on completion of the offer in August 2001, the Commission, by Decision of 10 October 2001¹, declared the merger incompatible with the common market on the grounds that it would, among other things, significantly impede effective competition in various French sectoral markets.

Since Schneider had implemented a merger which was subsequently declared to be incompatible with the common market, the Commission, on 30 January 2002, adopted a second Decision² which ordered Schneider to divest itself of Legrand within nine months, a period which expired on 5 November 2002.

Schneider brought actions before the Court of First Instance against the decisions of incompatibility and divestiture and sought their annulment.

In the interim, the Commission extended until 5 February 2003 the period within which Schneider was to divest itself of Legrand.

¹ Commission Decision 2004/275/EC of 10 October 2001 declaring a concentration to be incompatible with the common market (OJ 2004 L 101, p. 1).

² Commission Decision 2004/276/EC of 30 January 2002 requiring undertakings to be separated (OJ 2004 L 101, p. 134).

For its part, Schneider made preparations for the transfer of Legrand, to be carried out in the event of its two actions for annulment being dismissed. For that purpose, on 26 July 2002, Schneider concluded with the Wendel-KKR consortium an agreement for sale, which had to be implemented no later than 10 December 2002. It contained a clause enabling Schneider, in the event of annulment of the incompatibility decision, to cancel the agreement no later than 5 December 2002, in consideration of payment of compensation for cancellation of EUR 180 million.

By two judgments of 22 October 2002³, the Court of First Instance annulled both the incompatibility decision and the divestiture decision. Among other grounds, the Court of First Instance held that the Commission had failed to have regard to Schneider's rights of defence, because of a procedural irregularity.

Following those judgments, the Commission resumed the procedure of investigating the Schneider-Legrand transaction. The Commission informed Schneider that the transaction was liable to undermine competition in the French sectoral markets. On 2 December 2002 Schneider advised the Commission of its decision to sell Legrand to Wendel-KKR, a sale which took place on 10 December 2002, the date stipulated in the agreement of 26 July 2002.

On 10 October 2003, Schneider brought an action for damages against the Commission before the Court of First Instance, seeking compensation of approximately EUR 1 700 million as reparation for the losses Schneider claimed it had sustained because of the illegality of the incompatibility decision.

By judgment of 11 July 2007⁴ the Court of First Instance recognised Schneider's right to obtain compensation but only in respect of some of the losses alleged by that company. After finding that the failure to have regard to Schneider's rights of defence constituted a sufficiently serious breach of a rule of law intended to confer rights on individuals, the Court of First Instance confirmed that there was a causal link between the unlawful act committed and two heads of damage sustained by Schneider. The first comprised 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 of First Instance on 22 October 2002. The second represented the reduction in the sale price which Schneider had to concede to Wendel-KKR in order to obtain postponement of completion of the sale until 10 December 2002. The Court of First Instance held, however, that only two thirds of the loss under the second head of damage should be compensated, on the grounds that Schneider had itself contributed to its loss by assuming the real risk of the merger subsequently being declared incompatible and of a forced sale of Legrand's assets.

The Commission appealed against the judgment of the Court of First Instance and asks the Court of Justice to set it aside.

The Court upholds, first of all, the judgment of the Court of First Instance in so far as it ordered the Community to make good the loss represented by the expenses incurred by Schneider in respect of its participation in the merger control procedure which was recommenced by the Commission after its two decisions had been annulled.

³ Judgment of the Court of First Instance in Case T-310/01, *Schneider Electric v Commission*, and judgment of the Court of First Instance in Case T-77/02, *Schneider Electric v Commission* (see also CP 84/02).

⁴ Judgment of the Court of First Instance in Case T-351/03, *Schneider Electric v Commission* (see also CP 48/07).

However, with regard to the loss sustained by Schneider as a result of the reduction it conceded in the sale price of Legrand, the Court rules that the Court of First Instance was incorrect in holding there to be a direct causal link between the Commission's wrongful act and that loss.

As at 26 July 2002, the date on which Schneider concluded an agreement for the sale of Legrand with Wendel-KKR, Schneider was required under the divestiture decision to enter into a sale procedure.

The Court notes, however, that the Commission had extended until 5 February 2003 the period for the divestiture, which was initially due to end on 5 November 2002, and that the Court of First Instance annulled the incompatibility decision by its judgment of 22 October 2002, before the end of the period fixed by the agreement for completion of the sale.

Against that background, Schneider decided not to exercise the cancellation option within the period expiring on 5 December 2002 and thus to allow completion of the sale to take effect on 10 December 2002.

The Court concludes that the direct cause of the loss claimed was Schneider's decision, which it was under no obligation to take, to allow the sale of Legrand to take effect on 10 December 2002. That conclusion is not called in question by the fact that, in making that choice, Schneider was at risk of having to pay a penalty of EUR 180 million, as that risk derived from the agreement for sale which Schneider had entered into.

The Court therefore sets aside in part the judgment of the Court of First Instance in so far as it ordered the Community to make good the loss claimed by Schneider as a result of the reduction in the sale price of Legrand.

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Languages available: ES DE EN FR HU NL PL PT RO

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=C-440/07>

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",
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