

Case T-310/01

Schneider Electric SA

v

Commission of the European Communities

(Competition — Regulation (EEC) No 4064/89 — Decision declaring a concentration to be incompatible with the common market — Action for annulment)

Judgment of the Court of First Instance (First Chamber), 22 October 2002 II-4075

Summary of the Judgment

1. *Competition — Concentrations — Examination by the Commission — Decision requesting information addressed to the notifying parties — Automatic suspension of the four-month period referred to in Article 10(3) of Regulation No 4064/89 (Council Regulation No 4064/89, Arts 10(3) and (4) and 11(5))*

2. *Competition — Concentrations — Assessment of compatibility with the common market — Relevant market — Geographical definition*
(Council Regulation No 4064/89, Art. 2(3))
3. *Competition — Concentrations — Assessment of compatibility with the common market — Creation or strengthening of a dominant position impeding competition — Assessment criteria*
(Council Regulation No 4064/89, Art. 2(3))
4. *Competition — Concentrations — Assessment of compatibility with the common market — Creation or strengthening of a dominant position impeding competition — Relevance of the range of products and brands of the entity created by the concentration — Not decisive where presence and supply vary from one national market to another*
(Council Regulation No 4064/89, Art. 2(3))
5. *Competition — Concentrations — Incompleteness of a decision declaring a concentration incompatible with the common market — Not relevant if the decision is otherwise justified by a set of factors*
(Council Regulation No 4064/89, Art. 2(3))
6. *Competition — Concentrations — Administrative procedure — Observance of the rights of the defence — Statement of objections — Necessary content*
(Commission Regulation No 447/98, Art. 13(2))

1. Where, following a failure by the parties notifying a concentration between undertakings to respond to a letter requesting information within the reasonable period set therein, the Commission adopts a decision, pursuant to Article 11(5) of Regulation No 4064/89 on the control of concentrations between undertakings, ordering the parties to provide it with the information requested, the four-month period referred to in Article 10(3) of that regulation is ‘exceptionally... suspended’, under the mandatory terms of Article 10(4). Where a decision requiring information has been properly sent by the Commission to a notifying undertaking, the fact that the term ‘exceptionally’ is used does not pre-

clude that decision from automatically suspending the four-month period from the date on which it is found that the necessary information has not been provided until the date on which it is provided.

What is exceptional, within the meaning of Regulation No 4064/89, about suspension of the relevant period is the

occurrence of the conditions which allow a decision requesting information to be adopted and not the consequences to be inferred from such a decision.

(see paras 99-100, 104, 106, 109)

national effects which may increase the impact which a concentration has on each of the national sectoral markets deemed relevant but those effects must be demonstrated to the requisite legal standard and not merely presumed to exist.

(see paras 171, 178-179)

2. The geographic market to be taken into account for the purpose of applying Regulation No 4064/89 on the control of concentrations between undertakings is a defined geographic area in which the product concerned is marketed and where the conditions of competition are sufficiently homogeneous for all economic operators, so that the effect on competition of the concentration notified can be evaluated rationally.

(see para. 154)

4. When applying Regulation No 4064/89 on the control of concentrations between undertakings, the Commission may not base the arguments supporting its assessment of the risk of the creation or strengthening of a dominant position impeding competition on the national sectoral markets affected by a concentration on the fact that the new entity will have a range of products and brands which is unrivalled throughout the European Community where it is unable to establish that the entire range is offered on the relevant national markets.

(see paras 239-243, 255-257, 262)

3. When applying Regulation No 4064/89 on the control of concentrations between undertakings, the Commission must, for the purpose of demonstrating the risk of the creation or strengthening of a dominant position impeding competition on previously defined national sectoral markets, use evidence of economic power relating to those markets. It may also take account of trans-

5. However incomplete a Commission decision finding a concentration

incompatible with the common market may be, that cannot entail annulment of the decision if, and to the extent to which, all the other elements of the decision permit the Community judiciary to conclude that in any event implementation of the transaction will create or strengthen a dominant position as a result of which effective competition will be significantly impeded for the purposes of Article 2(3) of Regulation No 4064/89 on the control of concentrations between undertakings.

(see para. 412)

6. The statement of objections must contain an account of the objections cast in sufficiently clear terms to achieve the objective ascribed to it by the Community regulations, namely to provide all the information the undertakings need to defend themselves properly before the Commission adopts a final decision.

That requirement is particularly strict in the procedures for reviewing concentrations between undertakings governed by Regulation No 4064/94 in which the Commission adopts a prospective approach to the state of competition to which the concentration under examination is likely to give rise in the future. In those procedures, the statement of objections is not solely intended to spell out the complaints and give the undertaking to which it is addressed the opportunity to submit comments in response. It is also intended to give the notifying parties the chance to suggest corrective measures and, in particular, proposals for divestiture and sufficient time, given the requirement for speed which characterises the general scheme of Regulation No 4064/89, to ascertain the extent to which divestiture is necessary with a view to rendering the transaction compatible with the common market in good time.

(see paras 440-444)