JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
22 October 2002 *

In Case T-77/02,

Schneider Electric SA, established in Rueil-Malmaison (France), represented by A. Winckler and É. de La Serre, lawyers,

applicant,

v

Commission of the European Communities, represented by P. Oliver, P. Hellström and F. Lelièvre, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Spanish.

supported by

Legrand SA, established in Limoges (France), represented by H. Calvet, lawyer,

Comité central d'entreprise de la SA Legrand,

Comité européen du groupe Legrand,

established in Limoges (France), represented by H. Masse-Dessen, lawyer,

interveners,

APPLICATION for annulment of Commission Decision C (2002) 360 final of 30 January 2002, ordering a separation of undertakings (Case COMP/M.2283 — Schneider-Legrand),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges,

Registrar: B. Pastor, Deputy Registrar,

having regard to the written procedure and further to the hearing on 11 July 2002,

gives the following

Judgment

Legal framework

1 Article 2 of Council Regulation (EEC) No 4064/89/EEC of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1, corrected version in OJ 1990 L 257, p. 13, as amended by Council Regulation (EC) No 1310/97 of 30 June 1997, OJ 1997 L 180, p. 1; hereinafter 'Regulation No 4064/89') provides:

'1. Concentrations within the scope of this Regulation shall be appraised in accordance with the following provisions with a view to establishing whether or not they are compatible with the common market.

...

3. A concentration which creates or strengthens a dominant position as a result of which effective competition would be significantly impeded in the common

market or in a substantial part of it shall be declared incompatible with the common market.

...'

2 Article 4 of Regulation No 4064/89 requires the party or parties acquiring control or joint control of another undertaking to notify the concentration to the Commission.

3 Article 7 of Regulation No 4064/89 provides:

'1. A concentration as defined in Article 1 shall not be put into effect either before its notification or until it as been declared compatible with the common market...

...

3. Paragraph 1 shall not prevent the implementation of a public bid which has been notified to the Commission in accordance with Article 4(1), provided that the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of those investments and on the basis of a derogation granted by the Commission pursuant to paragraph 4.

4. The Commission may, on request, grant a derogation from the obligations imposed in paragraphs 1 or 3. The request to grant a derogation must be reasoned. In deciding on the request, the Commission shall take into account

inter alia the effects of the suspension on one or more undertakings concerned by a concentration or on a third party and the threat to competition posed by the concentration. That derogation may be made subject to conditions and obligations in order to ensure conditions of effective competition. A derogation may be applied for and granted at any time, even before notification or after the transaction.

...'

4 Article 8 of Regulation No 4064/89 provides, in particular, that:

'3. Where the Commission finds that a concentration fulfils the criterion defined in Article 2(3)... , it shall issue a decision declaring that the concentration is incompatible with the common market.

4. Where a concentration has already been implemented, the Commission may, in a decision pursuant to paragraph 3 or by separate decision, require the undertakings or assets brought together to be separated or the cessation of joint control or any other action that may be appropriate in order to restore conditions of effective competition.'

Background to the dispute

5 Schneider Electric SA ('Schneider'), a company incorporated under French law, is the parent company of a group engaged in the manufacture and sale of products and systems in the electrical distribution, industrial control and automation sectors.

6 Legrand SA is a company incorporated under French law which specialises in the manufacture and sale of electrical equipment for low-voltage installations.

7 On 16 February 2001 Schneider and Legrand, in accordance with the requirements in Regulation No 4064/89, notified the Commission of Schneider's proposal to make a public exchange offer ('the offer') in respect of all the shares in Legrand held by the public.

8 Having examined the notification, the Commission concluded that the notified concentration fell within the scope of Regulation No 4064/89 and that there were serious doubts as to its compatibility with the common market and the European Economic Area ('EEA').

9 As a result, the Commission adopted, on 30 March 2001, a decision under Article 6(1)(c) of Regulation No 4064/89, by which it opened the second stage of the procedure for examining the transaction notified.

10 On 7 June 2001, Schneider submitted the terms of its offer to the French Financial Markets Council (Conseil Français des Marchés Financiers), which at its meeting of 14 June 2001 stated that it had no objection. The offer was approved by the Commission des Opérations de Bourse (Stock Exchange Commission) on 19 June 2001.

11 Since Article 7(3) of Regulation No 4064/89 allows the implementation of public bids which have been notified to the Commission, provided that the purchaser does not exercise the voting rights attached to the securities concerned, Schneider launched its offer on 21 June 2001 and closed it on 25 July 2001.

12 On 3 August 2001, the Commission, acting in accordance with Article 13(2) of Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time-limits and hearings provided for in Council Regulation (EEC) No 4064/89 (OJ 1998 L 61, p. 1), sent Schneider a statement of objections in which it concluded that the transaction would create or strengthen a dominant position in a number of national sectoral markets.

13 On 6 August 2001 the Commission des Opérations de Bourse announced the final outcome of Schneider's offer for Legrand shares. Schneider thus acquired 98.7% of the shares in Legrand.

14 The notifying parties replied to the Statement of Objections by a document lodged on 16 August 2001.

15 A hearing was held on 21 August 2001.

16 On 10 October 2001 the Commission adopted a decision on the basis of Article 8(3) of Regulation No 4064/89 (C (2001) 3014 final (Case COMP/M.2283 — Schneider-Legrand)) ('the prohibition Decision').

17 Article 1 of the Decision states:

'The concentration notified to the Commission by Schneider on 16 February 2001, which would allow it to acquire sole control of Legrand, is declared incompatible with the common market and the EEA Agreement'.

18 Since the prohibition decision was taken after Schneider's offer was finalised, the Commission sent Schneider a second statement of objections on 24 October 2001, in which it stated that it intended to adopt a decision under Article 8(4) of Regulation No 4064/89 ordering the separation of Schneider and Legrand.

19 Having had access to the files on 31 October and 5 November 2001, Schneider replied to the statement of objections of 24 October 2001, by a document dated 7 November 2001. Schneider and the Commission held their first meeting on 14 November 2001. Schneider then put forward its view at a hearing held on 26 November 2001.

20 In response to a request made by Schneider on 22 November 2001, the Commission adopted a decision on 4 December 2001, which authorised Schneider, on the basis of Article 7(4) of Regulation No 4064/89, to exercise the voting rights attaching to its shareholding in Legrand through a trustee appointed by Schneider and subject to conditions laid down in an agreement approved by the Commission.

21 On 10 December 2001, Schneider and Salustro Reydel Management, the trustee, entered into an agreement for the appointment of the trustee.

22 Schneider brought an action for annulment of the prohibition decision by application lodged at the Court Registry on 13 December 2001 (Case T-310/01).

23 On 10 January 2002, following an application to that effect made on 17 December 2001, the Commission granted Schneider access to its case-files in the procedure relating to the separation of the two undertakings that were parties to the concentration.

24 In the course of a meeting on 15 January 2002, the Commission explained to Schneider's representatives the broad outlines of a draft decision ordering Schneider to divest itself of the Legrand group.

25 On 18 January 2002, Schneider had access to the case-files for the last time.

26 On 22 January 2002, the Advisory Committee on Concentrations gave its view on the draft decision.

27 By letter of 25 January 2002, Schneider submitted its final observations on the extent to which it should divest itself of Legrand.

28 By decision of 30 January 2002 ('the divestiture decision'), adopted under Article 8(4) of Regulation No 4064/89 and received by Schneider on 4 February 2002, the Commission ordered Schneider to divest itself of the Legrand group.

29 The divestiture decision set out the conditions subject to which the two undertakings were to be separated. In particular, it prohibited Schneider from entering into discrete transactions to divest itself of certain of Legrand's

businesses, made any purchaser(s) of Legrand subject to the Commission's prior approval, prohibited any subsequent transfer of certain of Legrand's businesses back to Schneider and, finally, required Schneider to implement the divestment within a certain period.

Procedure before the Court

30 By documents lodged on 18 March 2002, Schneider brought an action for annulment of the divestiture decision (Case T-77/02), requested the Court to adjudicate on that case under the expedited procedure provided for by Article 76a of the Rules of Procedure and made an application for suspension of the operation of the divestiture decision (T-77/02 R).

31 The application for the accelerated procedure was granted by decision of the Court, which was notified to the parties on 25 March 2002.

32 The hearing in the application for interim relief in Case T-77/02 R was held on 23 April 2002.

33 After the hearing for interim relief, the Commission, at Schneider's request, granted it an extension of the period within which the divestiture was to take place. As a consequence, Schneider withdrew its application for suspension of the operation of the divestiture decision. By order of 28 May 2002 of the President of the Court of First Instance, Case T-77/02 R was removed from the register and costs of the proceedings for interim relief were reserved until judgment was given in the main action.

34 By order of 6 June 2002, Legrand, the Comité central d'entreprise de la SA Legrand and the Comité européen du groupe Legrand were granted leave to intervene in the proceedings in support of the form of order sought by the Commission.

35 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure and put a number of questions to the parties, by way of measures of organisation of procedure, as provided for in Article 64 of the Rules of Procedure of the Court of First Instance. The parties complied with the requests.

36 The parties presented oral argument and replied to the Court's questions at the hearing on 11 July 2002.

Forms of order sought

37 Schneider claims that the Court should:

— annul in its entirety, and in the alternative in part, the divestiture decision;

— take any other measure it may consider appropriate;

— order the Commission to pay Schneider's costs, in particular the fees and other costs which it has incurred in connection with this action.

38 The Commission, supported by the interveners, contends that the Court should:

— grant its application for the representatives of Legrand and of the trustee to be called as witnesses;

— dismiss the action;

— order Schneider to pay the costs.

Law

39 Schneider submits that the illegality of the prohibition decision entails that of the divestiture decision. Schneider makes this application subject to that prior reservation.

40 Schneider also submits that the divestiture decision is vitiated by independent defects arising from procedural irregularities, by infringement of the requirement

to state reasons, by the Commission's lack of territorial jurisdiction, by infringement of Article 8(4) of Regulation No 4064/89, by failure to observe the principle of sound administration and, finally, by manifest errors of assessment.

41 The Court considers that, in so far as it orders Schneider to divest itself of the Legrand group in order to restore conditions of effective competition as provided for in Article 8(4) of Regulation No 4064/89, the divestiture decision presupposes that the prohibition decision is lawful, since it is a measure giving effect to that decision.

42 The divestiture decision can lawfully order Schneider to divest itself of the Legrand group pursuant to Article 8(4) of Regulation No 4064/89 only if the prohibition decision itself has lawfully established, in accordance with Article 2(3) and Article 8(3) of Regulation No 4064/89 and on conclusion of a proper administrative procedure, that the concentration notified will create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

43 By judgment delivered today in Case T-310/01, the Court annulled the prohibition decision.

44 Annulment of the prohibition decision therefore necessarily deprives the divestiture decision of any legal basis.

45 Since the illegality of the prohibition decision thus leads to the illegality of the divestiture decision at issue here, the present action for annulment of the divestiture decision must be upheld, without the need for the Court to examine the other pleas raised by the applicant or to adjudicate on the Commission's application for witnesses to be called.

46 The divestiture decision must therefore be annulled.

Costs

47 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it will be ordered to bear its own costs and to pay those incurred by Schneider, including the costs of the interlocutory proceedings, since Schneider applied for costs.

48 Under the third paragraph of Article 87(4) of the Rules of Procedure, Legrand, the Comité central d'entreprise de Legrand SA and the Comité européen du groupe Legrand, interveners, are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Annuls Commission Decision C (2002) 360 final of 30 January 2002 ordering the separation of undertakings (Case COMP/M.2283 — Schneider-Legrand);**

2. **Orders the Commission to bear its own costs and to pay the costs incurred by the applicant, including the costs of the interlocutory proceedings in Case T-77/02 R;**

3. **Orders Legrand SA, the Comité central d'entreprise de la SA Legrand and the Comité européen du groupe Legrand to bear their own costs.**

Vesterdorf Forwood Legal

Delivered in open court in Luxembourg on 22 October 2002.

H. Jung B. Vesterdorf

Registrar President