



COMPETITION COMMISSION OF INDIA

18th April, 2019

Combination Registration No. C-2018/07/586

Notice under Section 6(2) of the Act given by Schneider Electric India Pvt. Ltd. (SEIPL) and MacRitchie Investments Pte. Ltd. (MRIPL)

ORDER UNDER SECTION 31(7) OF THE ACT

A. Notice and Proposed combination

1. On 16th July, 2018, the Competition Commission of India (**Commission**) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (**Act**) given by Schneider Electric India Private Limited (**SEIPL / Schneider**) and MacRitchie Investments Pte. Ltd. (**MacRitchie**). The notice was filed pursuant to a Business Transfer Agreement (**BTA**) and a Share Subscription Agreement (**SSA**), both executed on 1st May, 2018.
2. SEIPL has proposed to acquire the electrical and automation (**E&A**) business of Larsen & Toubro Limited (**L&T**), as a going concern, on a slump sale basis. This, however, does not include the Marine Business Unit and Servowatch Unit of L&T, which are also presently a part of its E&A business. The assets that are being transferred shall be referred to as **Target Business**. After the said acquisition, MacRitchie would acquire 35% of the shareholding in SEIPL. SEIPL and MacRitchie shall collectively be referred to as **Acquirers** and the Acquirers along with L&T are collectively referred to as the **Parties**. Hereinafter, the acquisition of Target Business by SEIPL and the subsequent acquisition of 35% shareholding in SEIPL by MacRitchie are collectively referred to as the **Proposed Combination**.
3. The Acquirers also concurrently propose to acquire the international E&A business of L&T (**Global Proposed Transaction**). This is structured as share acquisitions of certain non-Indian subsidiaries of L&T by a newly incorporated entity formed under the laws of Singapore. At the time of the closing of the Global Proposed Transaction, the said entity will have an issued and paid-up share capital, wherein Schneider Electric Industries SAS and/or its affiliates will hold 65% of the shareholding; and MacRitchie will hold the remaining 35%.



4. The Acquirers initially notified this combination to the Commission on 25th May, 2018. However, this notice exhibited substantial defects and information gaps rendering it incomplete and not conforming with the requirements of the Competition Commission of India (Procedure in Regard to the transaction of Business relating to Combinations) Regulations, 2011 (**Combination Regulations**). The Commission found that the notice filed in Form II was incomplete in terms of Regulation 14 of the Combination Regulations. Accordingly, the Commission directed the Acquirers to file a fresh notice in Form II, after rectifying the defects and information gaps as pointed out. Accordingly, the Acquirers filed the present notice on 16th July, 2018.
5. In terms of Regulations 14 and 19(2) of the Combination Regulations, *vide* letter dated 27th July, 2018, the Acquirers were required to provide certain information / document(s). In response, after seeking due extension of time, the Acquirers filed their reply on 14th August, 2018. Subsequently, additional information was sought from the Acquirers *vide* another communication dated 28th August, 2018 under Regulation 19(2) of the Combination Regulations. The Acquirers, after seeking due extension of time, submitted their response on 11th September, 2018. In their responses, the Acquirers acknowledged that, in terms of Section 31(12) of the Act read with Regulations 14(5) and 19(2) of the Combination Regulations, the time taken in providing the required information including document(s) is to be excluded from the period provided in Section 31(11) of the Act and Regulation 19(1) of the Combination Regulations.
6. Further, in terms of Regulation 19(3) of the Combination Regulations read with Section 36(4) of the Act, the Commission also sought information *inter alia* from the competitors and customers of the Parties *vide* letters dated 9th August, 2018 and 27th August, 2018. The Commission received responses from a few of the competitors (**Competitor Respondents**) and customers (**Customer Respondents**). In terms of Regulation 19(3) of the Combination Regulations, the time taken in obtaining information from such enterprises, limited to a maximum period of fifteen working days, has also been excluded from the period provided in Regulation 19(1) of the Combination Regulations.

B. Parties to the Proposed Combination:

7. SEIPL is stated to be a company incorporated in India and is an indirect, wholly owned subsidiary of Schneider Electric SE (**Schneider**). As per the information given in the notice, Schneider is present in power management business [*i.e.* medium voltage (**MV**)],



low voltage (LV) and secure power], and in automation systems. Schneider provides integrated efficiency solutions, combining energy, automation and software services. In India, Schneider is operating through its subsidiaries and affiliates and *inter alia*, offers products and services relating to E&A business.

8. MacRitchie is stated to be a company incorporated in Singapore, and an indirect wholly owned subsidiary of Temasek Holdings (Private) Limited (**Temasek**). MacRitchie does not have any business operation other than holding investments. As per the information provided in the notice, Temasek has a non-controlling financial investment to the extent of ** in ***** and around ** in *****.
9. L&T is a public listed company incorporated in India. It is a technology, engineering, construction, manufacturing and financial services conglomerate. The E&A Business of L&T comprises manufacture and sale of low and medium voltage switchgear components, custom built low and medium voltage switchboards, electronic energy meters/ protection (relays) systems, control and automation products. The E&A business is stated to offer a wide range of products and solutions for electricity distribution and control in industries, utilities, infrastructure, buildings and agriculture sectors.

C. Prima facie concerns of the Commission:

10. The Commission in its meeting held on 24th September, 2018, formed a *prima facie* opinion that the Proposed Combination is likely to result in the following harm to competition:
 - 10.1. the Proposed Combination is a consolidation of two closest competitors in the LV switchgear industry in India who are also the first and second leading players. As per the details given in the notice, Schneider India (*i.e.* various entities of Schneider group in India including SEIPL) offers around 74 products / solutions in the E&A sector in India; whereas, the Target Business offers 46 different products/ solutions in the same sector. Amongst these product / solutions offered by Schneider India and the Target Business, in India, the Acquirers have identified 29 products / solutions to exhibit horizontal overlap.
 - 10.2. unlike the new age markets, LV switchgear markets are conventional where the distribution network plays a significant role in the success of the business. In such cases, the combined market share and change in HHI as a result of the Proposed



Combination are significant indicators of increased concentration and determine whether the case deserves investigation. Thus, on a product-wise assessment, the Proposed Combination is likely to increase the concentration significantly in fifteen product market viz. [ACBs, MCCBs, Contactors, Overload Relays, MPCBs, Panel accessories, MMRs, ODCs and other products/ solutions where the incremental (Δ) HHI is more than 150]. The only comparable competitors are ABB and Siemens but they would be significantly smaller players post the Proposed Combination with relatively smaller distribution networks. The Proposed Combination would thus confer the Combined Entity the ability to increase price in these markets;

- 10.3. it is seen that there is a strong preference for use of same brand of products in building a switchboard and thus, a player offering complete portfolio of LV components has an inherent advantage. L&T and Schneider have the widest range of offerings in the LV switchgear market in India. The next largest competitor would be around three times smaller than the Combined Entity. The consolidation would thus enable the Combined Entity to push its portfolio to the distributors by way of bundled offerings, rebates, value discounts, *etc.*;
- 10.4. the impugned markets feature volume discounts and rebates resulting in *de facto* exclusivity of dealership as they have larger incentives if they achieve higher volume and / or value of business with the same supplier;
- 10.5. the degree of contestability in the markets for LV switchgears is low and there is no likelihood of an entry that would be timely and sufficient in scope so as to act as a competitive constraint to the Combined Entity. The response of the competitors and customers shows that players offering limited LV products cannot act as a competitive constraint to the Combined Entity, which would be dominant to such an extent that it can drive the price, quality and commercial culture of the LV industry;
- 10.6. besides the loss in competition between two ranges of independent economic options in the market, the widest portfolio and reach of the Combined Entity would lock a larger part of the distribution network, panel builders and other downstream players with the Combined Entity thereby making entry further difficult;



- 10.7. The Commission further noted that the industry apparently features standardization(s) to a sizable extent according to the prevailing electrical system and regulatory prescriptions. However, the analysis of the Commission suggested that innovation in user interface, additional safety aspects are seen to provide a competitive edge and this plays a critical role in this industry. Therefore, the Commission observed that the consolidation of the two leading players in E&A business in India is likely to reduce the intensity of R&D in Indian context, besides conferring significant advantage to the Combined Entity with a wider portfolio of IPRs.
11. On a preliminary assessment of the market position of the Parties on the basis of their market share, concentration levels (HHI), entry conditions, nature of distribution network and innovation, *etc.*, the Commission was of the *prima facie* view that the Proposed Combination is likely to result in appreciable adverse effect on competition. The Commission directed the Secretary to issue a notice to the Acquirers under Section 29(1) of the Act. Accordingly, a notice dated 3rd October, 2018 was issued to the Acquirers to show cause in writing as to why investigation should not be conducted in the matter.
12. The Acquirers filed their response on 22nd October, 2018, along with certain remedies to address the harm to competition expressed in the notice dated 3rd October, 2018. The Parties to the combination further met the Commission on 29th October, 2018 to present their reply to the notice issued under Section 29(1) of the Act and explain the remedies offered. During the meeting, the Acquirers undertook to revise their remedy package to address one of the concern that the Proposed Combination is likely to result in higher price in the relevant products. On 30th October, 2018, the Acquirers filed additional submission stating that the Combined Entity offered price related behaviour for a period of 3 years.
13. The Commission in its meeting held on 8th November, 2018 noted that the behavioural commitments proposed by the Acquirers are insufficient, at that stage, to drop investigation in the matter. It was observed that the concerns expressed in the notice dated 3rd October, 2018 issued under Section 29(1) of the Act and the submissions / claims of the Acquirers thereon (including the remedies offered) have to be verified through investigation in the matter. Accordingly, the Commission *vide* letter dated 8th November, 2018 directed the Acquirers to publish the details of the Proposed Combination, in terms of Section 29(2) of the Act, read with Regulation 22 of the Combination Regulations,

within ten working days from the receipt of the direction of the Commission. The Commission further noted “*the competition concerns expressed in the notice dated 3rd October, 2018, issued under Section 29(1) of the Act, are primarily based on the information provided by the Acquirers and other material on record. It is possible that the Proposed Combination also raise concerns in certain other areas, which could be discovered during the course of further investigation under the provisions of the Act, and would be dealt appropriately*”.

D. Publication under Section 29(2) and public comments

14. In compliance with the direction of the Commission, the Acquirers published the details of the Proposed Combination on 20th November, 2018, inviting public comments on the Proposed Combination, which were to be filed with the Commission latest by 12th December, 2018. The Commission received 39 comments by the said date and later on 9 more comments were received. The Commission also conducted a separate market investigation and gathered information regarding the concerned markets from panel builders, distributors and electricity consultants¹.

E. Proposal for Modification under Section 31(3) and response of the Acquirers thereon

15. Upon considering the records of market investigation, submission by the parties and other material on record, the Commission was of the view that the Proposed Combination is likely to cause appreciable adverse effect on competition; however, the concerns could be addressed through appropriate modifications to the Proposed Combination. Accordingly, the Commission *vide* letter dated 16th January, 2019 issued a proposal for modification (PFM) under Section 31(3) of the Act, wherein it proposed divestment of L&T’s business in relation to six high market share LV switchgear products to alleviate the likely appreciable adverse effect on competition. In response, the Acquirers filed their amendment under Section 31(6) of the Act, *vide* submissions dated 16th April, 2019 *inter alia* stating that modifications proposed by the Commission are disproportional and the potential competition concerns could be addressed by alternative remedies.

¹ A total of 28 stakeholders were interviewed (11 panel builders, 12 distributors and 5 electricity consultants) and for each of the category of stakeholders same set of questions were put, regarding the nature of business and customer habits in the L V Switchgear industry.



F. Competition Assessment

(i) Relevant Market

16. The Commission observed that the Proposed Combination primarily concerns low voltage (LV) switchgears comprising of various electrical products and solutions. These products and solutions include equipment installed in industrial, commercial or residential buildings, downstream of connection to the medium-voltage electricity supply. LV switchboards distribute electricity to various levels of the installation (*i.e.* building, floor, apartment, *etc.*) and protect installations and users from over current and short circuits.
17. As per the details given in the notice, Schneider India (*i.e.* various entities of Schneider group in India including SEIPL) offers around 74 products / solutions in the E&A business whereas, the Target Business offers 46 different products/ solutions in the E&A business, in India. Amongst these products / solutions offered by Schneider India and the Target Business in India, the Acquirers have identified 29 products / solutions to exhibit horizontal overlap.
18. The Acquirers have submitted that these 29 overlapping products / solutions between Schneider India and Target Business are primarily intermediate products (inputs) that are used in the provision of E&A business applications as specified by downstream customer demands. These overlapping products / solutions, on a standalone basis, are stated to be different and therefore, not substitutable with each other. Accordingly, based on their functionality, end-use and other related characteristics, each of these 29 overlapping products / solutions are claimed to constitute a separate relevant market in India.
19. As regards the relevant geographic market, the Acquirers have contended the same to be the entire territory of India.
20. Based on the information available on record, it is observed that most of the overlapping products are components of either main LT Panel / switchboard (for connecting large industrial or commercial buildings to the medium-voltage network) or Sub Main LT Panel/ switchboard (typically used for floors in buildings) or a final panel board (for end users with low energy requirements, such as an occupant of an apartment). Generally, each of these overlapping products is not used on a standalone basis and is complementary or supplementary to the other products that are used in the switchboard.



In view of the same, one can group the overlapping products under one or more clusters based on their choice as a portfolio / cluster, their functionality and utility.

21. Many of the Customer Respondents and Competitor Respondents confirmed that panel builders / electricians engaged in designing and assembling of LV panels prefer to use components of the same brand in designing a main switchboard or distribution switchboard or a final panel board. Some of the Customer Respondents have also stated that there are no technical constraints in mixing components of different brands in the same panel. However, the preference is for use of products of same brand in any specific switchboard due to commercial habit and better housing and coordination amongst the components.
22. In this regard, the Commission also considered the interview of the Managing Director of L&T regarding the Proposed Combination. During this interview, he states that the markets in this business are largely cluster(s) in nature and people going for a switchboard prefer to assemble the same with components of the same brand. The investigation also confirmed this fact and further revealed that the switchgear manufacturers provide technical coordination charts in case of use of all products from their brands.
23. The Commission also considered the practice followed in mature jurisdiction such as the European Commission, where competition assessment of similar switchgear products was done at the level of each overlapping products as well as at the level of different switchboards / clusters wherein such products are used in combination with other products². In such cases, the European Commission also considered the portfolio effects resulting from combination between switchgear makers. Given the preference and industry practice for use of same brand products, this case also merits competition assessment from the perspective of portfolio of the Combined Entity. Accordingly, it is considered appropriate to assess the Proposed Combination at the level of each overlapping product / component and the markets for clustered products.
24. In view of insignificant transportation costs and availability of the overlapping products across India, the entire territory of India has been considered as the relevant geographic market.

² M2283 [Schneider/ Legrand]



(ii) Concentration levels – Product level

25. In terms of clause (g) of Section 20(4) of the Act, ‘*market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination*’, is one of the relevant factors for determining the likely appreciable adverse effect on competition. Further, ‘*level of combination in the relevant market*’ is another factor provided under clause (c) of Section 20(4) of the Act.
26. The Commission had formed a *prima facie* view that the Proposed Combination would increase the concentration significantly in 15 product / solutions that were identified in the notice dated 3rd October, 2018, issued under Section 29(1) of the Act. The description of the characteristics and functionalities of these products are as under:
- 26.1. ***Air Circuit Breaker (ACB):*** ACB is an electromechanical switching and protection device for low voltage power distribution application in switchboards. Its function is to switch on/off power supply and give protection to the complete power distribution system in the event of any fault. ACBs are mainly used as low voltage main incomer for power distribution supply in any industrial, utility or commercial application. ACBs are used in diverse industries, which includes pharma, food and beverages, textile, chemical, metros and railways. ACB’s are also used in buildings, office premises, data centres, hospitals, *etc.* Based on the application requirements, ACBs are available in fixed or draw-out type, and manual or electrically operated variants. ACBs are larger in physical dimensions when compared to other circuit breakers.
- 26.2. ***Moulded Case Circuit Breaker (MCCB):*** MCCB is an alternative to “fuse” wire that is used in switchboards as short circuit and overload protection arrangement. While “fuse” has to be replaced after each occurrence of short circuit, MCCB can be easily reset and provides better operational safety and convenience. MCCBs have industrial and commercial application in sectors such as mining, petrochemicals, and renewable energy systems. MCCBs are used in main switchboards as outgoing feeder supplies and as incomer in secondary distribution boards.
- 26.3. ***Overload relays:*** Overload relays protect motors connected in electrical circuits and provide protection against overload of motors. Their range depends on the current rating and type of overload protection. There are two



types of Overload relays: Electronic and Thermal. Electronic overload relays use a current sensing device whereas thermal overload relays use a bimetallic strip.

- 26.4. **Contactors (Including Control Contactors):** Contactors are devices used for switching off a motor load or a non-motor load. These are widely used in industrial application where motors are used. When electricity passes through the electrical circuit with a coil, a magnetic field gets created around the coil. This field pulls the switches down and completes the 3-phase AC power circuit connected to the motor and turns the motor on. Whenever the supply of current to coil is cut off, the magnetic field goes off and the switches open up, stopping the power flow to the motor. Contactors are used only for switching on and off high current electrical devices and these do not offer any protection like circuit breakers.
- 26.5. **Motor Protection Circuit Breaker (MPCB):** MPCB is a specially designed protection device that protects motors from short circuit and overload faults. MPCBs are used to protect motors wherever motors are used. Common application include various types of machines like elevators (lifts), hoists, cranes, machine tools, crushers, pumps, fans, amongst others.
- 26.6. **Outdoor Cabinets (ODC):** ODCs house switchgear and are used in the Telecom sector. ODCs are telecom equipment and are similar to switching equipment. These are weather sensitive and prevent water from going in. These are customised based on the needs of the customers. It is submitted that the characteristics of ODCs entail fabricated metallic enclosures for housing various equipment in open environments *i.e.*, exposed sunlight, rain and other natural elements. The enclosures are naturally ventilated or force cooled using fans or other cooling arrangements depending on the application.
- 26.7. **Panel Accessories:** Panel accessories consist of Rotary Switches, Control Devices, Cam Switches and Timing Devices. These are used in electrical cabinets to operate and see the status of an electrical feeder or motor, and manage a function of timing and controlling the voltage or current. These are used in all E&A cabinets.
- 26.8. **Motor Management Relays (MMRs):** MMRs are used for protection and measurement of motor load. These offer better protection over the normal



overload relays. MMRs also have communication capability, enabling the transfer of motor load data on a communication protocol (Modbus, Profibus, Ethernet IP, *etc.*) to a central system. Primary components of MMR are advance protection and measurement communication relays and include IMCC equivalent relays, PCUs and electronic relays.

- 26.9. ***Power Factor Correction Components (PFCC):*** PFCCs are used for power factor improvement in electrical distribution system. In order to maximize the usage of the available power, ideally power factor should be maintained close to unity. In order to achieve that, PFCCs are used in electrical distribution system.
- 26.10. ***Residual Current Device (RCD):*** RCDs are circuit breakers used for the specific purpose of earth leakage protection. In India, either Residual Current Circuit Breaker (RCCB) or Residual Current Breakers with Overload Protection (RCBO) are used as RCDs. It performs the function of protection device against earth leakage and protects the life of a user in the event of an accidental contact with live electrical parts, and protects equipment and property in the event of a faulty earth connection. The product is used in final panel boards, but is also used in other products where the possibility of an accidental contact with live electrical parts exists. A small number of protection devices against earth leakages are used in distribution boards, also.
- 26.11. ***Final Distribution Breaker Components/Miniature Circuit Breakers (MCB and Isolators):*** Final Distribution Breaker Devices includes MCBs and Isolators. MCB is an alternative to “fuse” wire that is used in switchboards as a short circuit and overload protection arrangement, whereas, Isolators are used for switching purposes.
- 26.12. ***Electrical and Automation Solutions:*** E&A Solutions serves medium voltage switching and protection that includes Energy Systems Level 2 and Control and Automation solutions. The Control and Automation business offers integrated E&A Solutions for oil and gas, cement, metal and other manufacturing industries, infrastructure as well as utilities like power and water. It consists of two sub-segments such as (i) Automation and (ii) Video Analytics.
- 26.13. ***Switch Disconnect Fuse (SDF):*** SDF performs the functions of both switch and isolator. This is an electromechanical device used in LV switchboards as



switching, isolation and short circuit protection arrangement. These switches are used in LV power distribution and motor control systems and are used as short circuit protection device in starters. They are used for standalone mounting.

- 26.14. ***Power Metering Products/Digital Panel Meters:*** Digital panel meters monitor electrical parameters. The range/ list of electrical parameters monitored covers from basic measures like voltage, current, frequency to advanced measures like harmonics, voltage sag/swell and transients. The digital panel meters are available in LED as well as LCD versions.
- 26.15. ***Final Distribution Enclosure Systems/ DB:*** Distribution Boards are metallic enclosures used to house modular devices like MCBs/ RCDs/ Isolators *etc.* Distribution boards are of varying types depending upon the nature of power supply and specific requirements of installation/ networks. Most common distribution board variants are single-phase network distribution boards and three phase network distribution boards.
27. The Commission notes that as per the data provided by the Acquirers, the market share of Schneider India, Target Business and their competitors have remained consistent over the last three-year period and did not exhibit any significant variation. This indicated that markets for the overlapping products have matured and that there has not been any entry of competitive significance in the recent times.
28. The Acquirers alluded that market share may not be the right criterion to assess the impact of the combination. They contended that there are other competitors in these markets, that they don't control the downstream pricing; that the combination is likely to increase manufacturing in India; and thus, the combination is not likely to cause appreciable adverse effect on competition. In this regard, it is observed that the markets in question are largely electrical products where distribution network plays a significant role in the success of any competitor, as in the case of any other conventional market / industry. Thus, market share / concentration levels have been taken as one of the significant considerations in determining the extent of concentration resulting from the Proposed Combination. Nevertheless, the Commission has also looked into other relevant factors for the purpose of assessment of the Proposed Combination.



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Table 1: Parties estimate of market share

No.	Product Name	Market share of the Parties (%)			Market share of the Competitors (%)															Total Market Size (in Cr.)	Pre-Combination HHI	Post-Combination HHI	Delta HHI
		Schneider	L&T	Combined	ABB	Siemens	C&S	Rittal	Maxbros	Teknic	Esbee	Epcos	Legrand	Havells	Honeywell	Elmeasure	Secure	Ors					
1	Air Circuit Breaker (ACBs)	20-25	25 - 30	45-50	20-25	15-20	5-10												5-10	***	*****	>3000	>1200
2	Moulded Case Circuit Breaker (MCCB)	20-25	25-30	45-50	10-15	10-15	5-10												15-20	***	*****	>3000	>1200
3	Overload Relays	20-25	35-40	55-60	5-10	15-20	10-15												0-5	***	*****	>4000	>1500
4	Contactors	20-25	25-30	45-50	10-15	20-25	5-10												5-10	***	*****	>3000	>1200
5	MPCB's	40-45	10-15	50-55	5-10	25-30	0-5												5-10	***	*****	>3500	>900
6	ODC's	20-25	15-20	35-40				25-30	10-15										15-20	***	*****	>2500	>750
7	Panel Accessories	10-15	20-25	35-40			5-10			10-15	10-15								35-40	***	*****	>2000	>600
8	MMRs	25-30	5-10	35-40	15-20	35-40	5-10												0-5	***	*****	>3000	>450
9	PFCC	5-10	15-20	25-30								30-35							35-40	***	*****	>2000	>300
10	RCDs	10-15	10-15	25-30	5-10	0-5							25-30	20-25					10-15	***	*****	>2000	>300
11	MCBs	10-15	10-15	25-30	5-10		0-5						25-30	15-20					30-35	***	*****	>2000	>300
12	E&A Solutions	10-15	10-15	25-30	10-15	10-15									10-15				35-40	***	*****	>1500	>300
13	SDFs	0-5	45-50	45-50	5-10	25-30	5-10							5-10					5-10	***	*****	>3000	>150
14	Power Metering Products/Digital Panel Meters	25-30	0-5	30-35												10-15	10-15		45-50	***	*****	>1500	>150
15	Distribution Boards	10-15	5-10	15-20	5-10								30-35	25-30					20-25	***	*****	>2000	>150

Table 2: Market share as reviewed by the Commission

Sl. No.	Product Name	Market share of the Parties (%)			Market share of the Competitors (%)							Total Market Size (in Cr.)	Pre-Combination HHI	Post-Combination HHI	Delta HHI
		Schneider	L&T	Combined	ABB	Siemens	C&S	Legrand	Havells	Honeywell	Ors				
1	Air Circuit Breaker (ACBs)	20-25	30-35	55-60	15-20	15-20	0-5				5-10	***	*****	>3500	>1650
2	Moulded Case Circuit Breaker (MCCB)	20-25	30-35	50-55	10-15	5-10	5-10				15-20	***	*****	>3000	>1350
3	Overload Relays	15-20	30-35	50-55	0-5	35-40	0-5				0-5	***	*****	>4000	>1200
4	Contactors	20-25	20-25	45-50	10-15	15-20	15-20				5-10	***	*****	>2500	>1050
5	MPCB's	35-40	10-15	45-50	5-10	30-35	0-5				5-10	***	*****	>3500	>750
6	MMRs	20-25	5-10	30-35	35-40	30-35	0-5				0-5	***	*****	>3000	>300
7	MCBs	10-15	10-15	20-25	0-5		5-10	20-25	15-20		15-20	***	*****	>1500	>300
8	E&A Solutions	15-20	10-15	25-30	0-5	15-20				10-15	40-45	***	*****	>2000	>300
9	SDFs	0-5	45-50	45-50	0-5	10-15	25-30		5-10		5-10	***	*****	>3000	>150



29. In the notice issued under Section 29(1) of the Act, the Commission considered the market share estimate as given by the Acquirers. Subsequently, in the inquiry, the Commission gathered sales information from the main competitors *viz.* ABB, Siemens and C&S. It was found that there is a difference in the reporting by the Acquirers and the said competitors. Accordingly, the Commission reviewed the estimate given by the parties using the details obtained from competitors, in respect of 9 of the 15 products. The figures provided by the Acquirers were based on their actual sales but for the competitors, it was only an estimate. In the reviewed estimate by the Commission, the sales of the parties as well as the major competitors *viz.* ABB, Siemens and C&S are based on actuals. Sales of all other players have been taken as given by the Acquirers. Thus, the reviewed market share estimate is a more appropriate estimate of market position of various competitors. The concentration levels have been computed on both the estimates as given by the Acquirers as well as the estimate based on the review made by the Commission.
30. The review of market share by the Commission showed that the market share of L&T and Schneider are further high in respect of ACB (55-60%) and MCCB (50-55%) as compared to the figures provided by the Acquirers. On the other hand, the combined market share of the parties is relatively less for Overload Relays (50-55%) and Contactors (45-50), as compared to the figures provided by the Acquirers, yet the parties are commanding the leading and a significant position. Although there is a difference between the figures provided by the Acquirers and the reviewed estimate by the Commission, the competition assessment of the Proposed Combination would largely be on similar lines whether one takes the Acquirer's estimate or the reviewed estimate by the Commission. This is because, under both these estimates, the Proposed Combination is likely to increase the concentration in the markets and also confer the Combined Entity a dominant market position in several of the relevant markets. It can be further seen from the table that in many of these markets, the next largest player would be relatively smaller in size. Given that the Parties are major competitors, the Combined Entity would thus have the ability and incentive to discontinue the offerings of L&T as well as increase the price [Section 20(4)(e)]. Further, the combination would also bring an end to the effective and vigorous competition in the relevant markets [Section 20(4)(i)].



(iii) Clustering and portfolio effects:

31. The investigation in the matter has shown that there is a strong preference for use of same brand products across a LV panel. During the preliminary inquiry into the Proposed Combination, an overwhelming majority of the Competitor Respondents have confirmed the strong preference for use of same brand products across a LV panel. During the market investigation of stakeholders, it emerged that the estimation, designing and building of a LV panel, whether a Power Control Centre (PCC) or Motor Control Centre (MCC), is on a case to case basis and depends on the actual load requirement of the given project. While ACBs and MCCBs are the prime and basic components of any PCC; MPCBs, Contactors and Overload Relays are other major components, which find a place on need basis in a PCC and/or MCC.
32. As noted earlier, one of the major *prima-facie* concerns of the Commission is regarding portfolio effects and bundled offerings. In this regard, the Commission observed that *'it is seen that there is a strong preference for use of same brand of products in building a switchboard and thus a player offering complete portfolio of components has an inherent advantage. L&T and Schneider have the widest range of offerings in the LV switchgear market in India. The next largest competitor would be around three times smaller than the Combined Entity. The consolidation would enable the Combined Entity to push its portfolio to the distributors by way of bundled offerings, rebates, value discounts, etc.'*
33. The Commission also considered the interview of the Managing Director of L&T regarding the Proposed Combination (**L&T MD Interview**)³. During this interview, he stated that the markets in this business are largely cluster(s) in nature and people going for a switchboard prefer to assemble the same with components of the same brand. The transcript of relevant portion of his statement is reproduced as under:

"I would like to put it like this, ultimately when you do a business transaction of existing business within the country there are various regulatory approvals and one of them critical is a Competition Commission because they would have a view on this. If you look at our electrical product business, what one has to view is in a multi form manner. A panel is not sold as a panel, when somebody builds a factory or a housing complex or a manufacturing complex or an industry, he buys a series of products, one cannot be sold irrespective of other. Nobody buys one from here and one from there & something else from some other company. You tend to buy it from a same organization to let you have a uniform product range within the entity

³ Available at: <https://youtu.be/DF7VwOLdK54> (Last accessed on 15.01.2019)

that you are trying to put up. Now in this if you see there are certain products between Schneider and L&T which breach CCI norms of.... which tend to have higher norm is a percentage...I think it is about 7 or 8 products out of 50-60 products..... What happens is that one cannot take an individual view of it or a particular view of it; you have to look it at holistically. The fact remains some of it are higher content and therefore we have to go through the range and see how to satisfy from the overall business point of view.”

(Emphasis added)

34. The Parties have not disputed the fact that they have the widest portfolio of LV switchgears and that they are the first and second largest player in the LV switchgear industry. Although ABB and Siemens are the next preferred brands in the industry and have a relatively competitive portfolio of LV products, their product ranges/ offerings are not as wide as that of L&T and Schneider. When asked about the 29 overlapping products of L&T and Schneider, **** responded that ‘**** offers a relatively competitive portfolio which, however, does not cover all segments and applications as described above’. **** on the other hand is not present in bus bars trucking, wires, power metering products/ digital panel meters, ODCs and E&A solutions. These are suggestive of the fact that the Parties have the widest portfolio and are the first and second competitors in LV industry.
35. In their response to the notice under Section 29(1) of the Act, the Acquirers themselves have admitted the preference for use of single brand products across the LV panels but contested the extent of such preference. The relevant portion of the response⁴ reads that ‘the parties agree that customers prefer to use clustered products of a single brand due to commercial interaction, ease of transaction and performance accountability. However, this is limited to the 6 key products (i.e., Air Circuit Breaker (“ACB”), Moulded Case Circuit Breaker (“MCCBs”), Switch Disconnecter Fuse (“SDFs”), Contactors, Overload Relays and Motor Protection Circuit Breaker (“MPCBs”) used in LV panels’.
36. In their response dated 22nd October, 2018, the Acquirers have claimed that when a panel builder mix and match products, they offer a warranty on the complete panel to the customer. This claim in a way alludes that panels are built by mixing and matching different components. However, almost all the panel builders and the electrical consultants interacted with during the market investigation, confirmed that use of same brand products across LV panel, is preferred. The market investigation revealed that big

⁴ Para 29 at page 12 of the submission dated 22nd October, 2018 of SEIPL and MRIPL

brands facilitate Type Test Assembles/Report (TTA/R) in case of use of same brand products across the LV panel. The reasons cited for use of same brand components across a LV panel were *inter alia* industry discipline, need for achieving better coordination and discrimination, easy after-sales services, cost saving and ease of maintaining buffer stock, etc. These confirm the preliminary observations of the Commission as well as facts admitted by the Acquirers with respect to clustering of products.

37. The above findings warrant the need for competition assessment at a level where products are generally clustered in one basket. Although the stakeholders, during market investigation have not limited the single brand preference to any particular set of LV switchgears, the Acquirers have submitted that such preference is only for six products. The combined market share of L&T and Schneider in the composite market for the six high market share products *viz.* ACBs, MCCBs, SDFs, Contactors, Overload Relays and MPCBs would be more than 50% and the next competitor *i.e.* Siemens is more than 3 times smaller than the Combined Entity with 10-15% market share, followed by ABB (10-15%) and C&S (10-15%).
38. While ACBs and MCCBs are the major components of a main switchboard in terms of value; MPCBs, Overload Relays and Contactors are also used in motor control centers. The decisional practice of EC⁵ also suggests that ACBs and MCCBs are taken as the primary main switchboard components⁶. If one were to take ACBs and MCCBs as one bucket of products, the market position of the Parties would be as under:

Table 3: Market shares in the combined market for ACB and MCCB

(In INR Cr.)								
S.No	Product	Schneider	L&T	ABB	Siemens	C&S	Ors.	Market Size
1.	ACBs	****	****	****	****	****	****	****
2.	MCCB	****	****	****	****	****	****	****
	Total	****	****	****	****	****	****	****
	Market share	20-25	30-35	10-15	10-15	5-10	10-15	
	Combined	55-60						
Source: Estimates based on the sales figure given by the parties and the competitors above, for the CY 2016.								

⁵ M2283 [Schneider/ Legrand]

⁶ The other component category included in the main switch board was 'Fuses, switchboard cabinets and components, wiring etc.' All these are incidental accessories to the main board.



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39. L&T and Schneider are undisputed market leaders in the above segment with combined market share of 55-60%, followed by ABB, which would be more than 4 times smaller than the Combined Entity.
40. It is observed that all the above 6 products may not be used together, at all times. As noted earlier, the design and building of LV panel is on a case-to-case basis depending on the needs of electricity load of a given project. However, what the clustering of different components means is that when two or more of the above six products are used in a LV panel, then panel builders / clients / electricity consultants have a strong preference to use all of them from the same brand. The Commission is aware that the above market share estimation at cluster level may not reflect the precise market position of Parties. Nevertheless, such estimation gives a fair and broad idea of the market position enjoyed by the Parties at the cluster level.
41. With less competition and lesser number of players, the extent of discounts offered in the said products is likely to be less and accordingly, price is likely to go higher for the consumers. In the market investigation of panel builders and electricity consultants, a majority of them have acknowledged the competition between the four big brands in the LV industry and stated that price would increase because of the Proposed Combination. More than a majority of the panel builders who negotiate price with manufacturers have stated that the Proposed Combination is likely to result in reduced competition, increased price and dominant/ dictating position of the Combined Entity. This also shows that the extent of countervailing bargaining power that they enjoy on account of the competition exerted by L&T would be lost as a result of the Proposed Combination [Section 20(4)(d)]. Given that L&T and Schneider are effective competitors in the market, the Proposed Combination would end the vigorous and effective competition in the market and the Combined Entity would have incentives to discontinue the product offerings of L&T and raise price.

(iv) Entry and expansion conditions

42. Given that the Parties have high market share, it is imperative to look into the market position of the competitors. Firstly, the market share based on sales indicate that the next competitor to the Combined Entity would be three to four times smaller in several of the relevant markets and in the overall LV switchgear industry. During the market investigation, all the distributors confirmed that unorganized players do not exist or compete with the organized players. Further, an overwhelming majority of the



distributors said that they do not import any switchgear. These suggested that imports and unorganized players do not act as a competitive constraint in LV switchgear industry.

43. The market investigation of panel builders revealed that for an overwhelming majority of them, the purchases were from L&T, Schneider, ABB and Siemens. These revelations, along with the market share estimates provided by the Parties as well as revised determination of the same by the Commission suggest that L&T, Schneider, ABB and Siemens are the premium brands of LV switchgear and the other players in the market do not appear to have a presence of competition significance.
44. Although Parties have cited the presence of players like C&S, BCH, Havells, *etc.* they have not been a credible competitive constraint to the top four brands. The examination of the case and investigation of stakeholders reveal that these Indian brands get preference in Government projects and most of their sales represent such supplies only. However, the reach and consumer preference for these brands in general are limited. Almost all the electricity consultants confirmed that the usual brands prescribed in the tenders are restricted to L&T, Schneider, ABB and Siemens. One of them said that Legrand is also prescribed but only for MCBs, and not for ACBs.
45. The market investigation also threw light on the proximity of competition between Schneider and L&T and revealed that the two companies are the closest competitors in terms of sales and distribution network and number 1 and 2 in the overall LV industry. Majority of the distributors identified Siemens to be the costliest brand in terms of price, followed by Schneider, whereas L&T and ABB were the next costly brands though both were at par. Thus, L&T has been a significant competitive constraint on Schneider as well as on ABB. The above facts suggest that the Proposed Combination would bring an end to the competition between L&T and Schneider as well as the competition between L&T and ABB. One of the Panel Builders stated that ABB and Siemens have an advantage, as they would also increase price. He further stated that ABB and Siemens would not have incentives to keep the price low. Some of the stakeholders also pointed out that Siemens LV products are largely focused on industries. Further, ABB and Siemens have relatively limited distribution network, which gives rise to issues relating to product availability and servicing of existing products.
46. *****, in its submission dated 16th August, 2018 stated that *‘A merger of this scale enables the entity to combine complementing portfolio combinations into bundled offerings which creates a very strong market position with low degree of countervailing*

power in the market. It will be extremely difficult to replicate these bundled offerings by either an entrant or a competitor. Hence, this dominance creates appreciable adverse effect to competition and may likely significantly increase the market entry barriers for any SME/ new entrant to exist independently in one or more switchgear products mentioned in the list above’

47. ********, in its reply dated 4th September, 2018 stated that “...*the proposed transaction will result in Schneider post-closing being by far the largest supplier for these products [LV ACBs, LV MCCBs and LV contactors]. In addition, the preference of panel builders to use the same brand of products when building an electrical switchboard is likely to give Schneider an advantage in choosing its market channels (which might limit the market availability for new entrants) and potentially the ability to increase prices so as to squeeze out competition. ... The likely disadvantages for competitors are following: - Reduced access to market and customers/consumer. -Reduced access to channel (panel builder, distributors, etc). - Commercial conditions likely to be influenced by strong player (price, credit). - Less competition in the market”.*

Entry

48. Whether entry could act as a competitive constraint is an important factor in competition assessment of combinations. Clauses (a) and (b) of Section 20(4) mention ‘*actual and potential level of competition through imports in the market’ and ‘extent of barriers to entry into the market’*, as factors relevant for the determination of appreciable adverse effect on competition in a combination.
49. The Commission observes that the market shares of the competitors admittedly remained static over a period of time. In the market scenario, as it stands on the day, ABB and Siemens are around half the size of L&T and/or Schneider in the markets for ACBs, MCCBs, MPCBs, SDFs, Contactors and Overload Relays. If the consolidation is to be effected as it is, ABB and Siemens would be 3 to 4 times smaller than the Combined Entity. Both these competitors would have to fight aggressively to retain their present market position and if they continue to do the business as usual, it is also likely that they would lose their market to the Combined Entity. Looking at the past market trends, it is unlikely that Siemens and ABB would be able to garner the void generated by the exit of L&T. Thus, with the massive size of the Combined Entity, the cost of the rivals to compete and increase their presence in the market would be higher than the present market scenario.



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50. The Commission, in its notice issued under Section 29(1) of the Act *inter alia* observed that “*The degree of contestability in markets for LV switchgears market(s) are low and there is no likeliness of an entry that would be timely and sufficient in scope so as to act as a competitive constraint to the resultant entity of the proposed combination. The response of the competitors and customers show that players offering limited LV products cannot act as a competitive constraint to the resultant entity which would be dominant to such an extent it can drive the price, quality and commercial culture of the LV industry*”.
51. It is observed that an entry to be considered as a competitive constraint to the combined entity of a proposed combination shall meet the established standards of timeliness, likeliness and sufficiency. Timeliness would depend upon the time required for a new firm to enter the relevant market and offer consumers a competitive alternative to the products or services offered by the combined entity. The consideration here is not a mere entry but a competitive alternative to the consumers of the combined entity. In general, an entry of such nature may not be considered timely if the period required is more than two years. Likeliness of an entry would *inter alia* depend upon whether the opportunity available to the entrant is higher than the scale and scope at which it could be profitable. Despite satisfying the likeliness and timeliness criteria, an entry may not be considered as a competitive constraint if the scale and scope of such entry is limited and not sufficient to counteract the anti-competitive outcomes of the combination. The entrant’s products being not close substitutes of the combined entity; its capabilities being limited on account of structural, regulatory or reputational barriers; and the entry being at a smaller scale *i.e.* penetration in limited products or portfolios of the combined entity, could be some of the instances of lack of sufficiency.
52. Coming to the impugned markets and industry, it is observed that the markets in question are well evolved and the market shares/ position of the premium brands (*viz.* Schneider, L&T, ABB and Siemens) is almost constant over a period of time. The Acquirers themselves in their submission dated 22nd October, 2018 have admitted that “*overall market shares have not changed significantly in the 3 years for which the analysis has been done, as 3 years is too short a period to witness significant change at a macro level.*”⁷”
53. The Acquirers have further claimed that there were several entrants in the past. It was claimed that the entry into the market for LV electrical components is not difficult and

⁷ Para 16 at page 8 of the submission dated 22nd October, 2018 of SEIPL and MRIPL

in fact, there were several entrants in the recent past in the market for ACBs, MCCBs, Contactors, Overload Relays and MPCBs. These include Havells, Mitsubishi, Hager and Eaton. These claims in a way give an impression that the markets in LV switchgear industry are contestable and thus, the same are not vulnerable to any anti-competitive outcomes resulting from the Proposed Combination. However, all the Competitor Respondents barring one⁸, who had replied to the information request of the Commission, have indicated that in the last five years no entrant could become a competitor to L&T and Schneider. Further, all of them have stated that a small-scale player offering limited E&A products/ solutions does not have the ability to act as a competitive constraint to the organised players like L&T and SEIPL.

54. As per the information on record, [REDACTED] entered the market for ACBs in 2015 but its sales in the said segment during the Financial Year 2017-18 is insignificant (around 0-5% market share). Similarly, [REDACTED], one of the globally renowned name for switchgears, entered the Indian market for ACBs in 2010-13 but its sales in the said segment during 2017 show that its market share is likely to be less than half a percent. Similar is the case for [REDACTED] in other LV products also. It is further noted that these players are not present in many of the business relating to the overlapping products. Parties own estimates⁹ of the market share of these brands (although claimed as entrants but present in the market since 2010-13) reveal that Eaton, Legrand, Mitsubishi have remained insignificant and in respect of the high market share products, thereby indicating that they were not able to establish a presence of competitive significance. The details of the estimate of the Parties is reproduced as under:

Table 4: Parties estimate of market share of entrants

No	Product	Overlapping Products/ Solutions	Year of entry	Market Shares in CY2014	Market Shares in CY2015	Market Shares in CY2016
1.	Overload Relays	Eaton	2013	0-5%	0-5%	0-5%
		Legrand	2013	0-5%	0-5%	0-5%
		Mitsubishi	2014	0-5%	0-5%	0-5%
2.	Contactors	Eaton	2013	0-5%	0-5%	0-5%
		Mitsubishi	2014	0-5%	0-5%	0-5%
		Legrand	2013	0-5%	0-5%	0-5%
3.	MCCB	Eaton	2010-12	0-5%	0-5%	0-5%
		Mitsubishi	2010-12	0-5%	0-5%	0-5%
		Legrand		0-5%	0-5%	0-5%

⁸ [REDACTED] indicated ABB and Siemens as entrants during the last 5 years but they are present in the market for a long time.

⁹ Page 46 of the submission dated 22nd October, 2018 and Page 51 of the submission dated 11th September, 2018 of SEIPL and MRIPL

4.	ACB	Eaton	2010-13	0-5%	0-5%	0-5%
		Mitsubishi	2010-13	0-5%	0-5%	0-5%
		Legrand		0-5%	0-5%	0-5%
5.	MMR	Eaton		0-5%	0-5%	0-5%
6.	MCB	Eaton		0-5%	0-5%	0-5%
		C&S Electric		0-5%	0-5%	0-5%
7.	RCD	Eaton		0-5%	0-5%	0-5%
		C&S		0-5%	0-5%	0-5%
8.	DB	Eaton		0-5%	0-5%	0-5%
		C&S		0-5%	0-5%	0-5%

55. The trend above clearly shows that the degree of contestability of the markets involved is very low. ******* in its submission dated 4th September, 2018 *inter alia* stated that ******* has observed new entrants like Eaton, Mitsubishi Electric entering the electrical and automation market in India. However, to the best of *******'s knowledge none of the new entrants in the switchgear field have become considerable competition in the last five years. They have lacked the scale and channel penetration to be a strong option in the projects & OEMs to L&T and Schneider, despite having the product range'. While competitors may have a negative bias but the above submission largely corroborates the above discussion and thus stands to be the factual position of the markets involved.
56. The Commission observes that establishing a brand and optimal distribution network appear to be the prime factors constraining effective entry of new players or expansion of existing players.

Brand Reputation:

57. The Parties are the largest two incumbents in the market with an established position in terms of their brand reputation. As noted earlier, for all the panel builders investigated, more than eighty percent of their procurements were from L&T, Schneider, ABB and Siemens. The market investigation of electrical consultants confirmed that the brands stipulated for use by panel builders were also limited to the said four brands. The market share estimate by the Parties as well as its review by the Commission also shows that the CR4 ratio is around 80% or more for the six products discussed above. When asked about the significance of brand and product in the industry, the panel builders suggested that brand; price; quality; delivery; services; and approach towards client, contactors and consultants, are factors having a say in the success of a player.
58. In the market investigation of distributors, L&T, an indigenous/ old Indian company, emerged to be the market leader and the preferred brand in terms of price, customer



preference, compatibility, marketing / distribution network, sales, availability, quality/ performance and highest number of installations. Based on various parameters, the responses of all the distributors showed that L&T was identified as the market leader on many instances. The next popular brand was Schneider, followed by Siemens. Majority of the panel builders also confirmed that on an overall basis, L&T is the most preferred/ used switchgear in India. Preference for use of L&T switchgears was attributable to a variety of factors such as the fact of being an old Indian technology company, better price, wide distribution network, easy availability, entrenched usage leading to preference in replacements, goodwill, better delivery and after sales services. All the Electricity Consultants identified L&T and/or Schneider alone to be the preferred brands of LV switchgears. These findings corroborate the overwhelming reputation and goodwill enjoyed by L&T and Schneider. As such, even in the current market scenario, it would be difficult for an entrant to earn such reputation in a short period. Other players such as Eaton, Hager, *etc.*, despite being present for more than five years, have an insignificant market position and this sufficiently demonstrates their inability to penetrate the market and establish themselves.

59. The significance of brand in this industry is also evident from the recital of the Brand Licensing Agreement entered into between L&T and Schneider, wherein, the Parties state that *‘In order to allow the Licensee to fully exploit the value of the Business purchased under the Business Transfer Agreement, the Licensee needs to be able to utilise and benefit from the goodwill of the Brands and the reserved Marks which are used in the Business’*. When an established player like Schneider takes a period of ******* years, which is the term of the Brand Licensing Agreement, to appropriate and reposition the L&T brands, the gestation period for an entrant to establish a brand across the relevant geographic market would be significantly higher. The Share Subscription Agreement dated 1st May, 2018, *inter alia*, entered into between Schneider and MacRitchie also states that Schneider *********

*********.

This again reflects the extent of value that the said Parties attribute to the brands of the Target Business. Existing brands that have brand value elsewhere are not able to penetrate the Indian market in these products though they may have significant presence in other LV product ranges.



Distribution Network

60. As per the details provided by the Acquirers, SEIPL has more than 500 distributors and L&T has more than 600 distributors. Apart from this, L&T's distribution network would include 1500 retailers and 100 service centres. The Combined Entity's distribution network would be the largest in the country. This fact was also confirmed by the market investigation of stakeholders. The LV products business, unlike new age markets, are largely distributor driven and their integration is likely to lock a significant part of the distribution network with the Parties. Majority of the customer respondents are single brand dealers although the Acquirers and competitors have claimed that they do not insist on exclusive dealerships. It appears that suppliers in this industry do not insist on exclusivity but in a volume discount and rebate featured industry, such as the one in question, it tends to result in *de facto* exclusivity as dealers have larger incentives if they place higher volume and/ or value of business with the same supplier. The market investigation of distributors revealed that single brand dealership is preferred from a financial prudence point of view and easy stocking. The single brand distributors have financial and logistic advantage and they can have a more focused approach to business, both from a commercial and technical sense. One of the distributors stated that it is difficult to deal in multiple brand goods when quality is similar across brands. Schneider's own submission indicates that *** of its distributors are single brand dealers¹⁰.
61. Besides the loss in competition between two ranges of independent economic options in the market, the widest portfolio and reach of the Combined Entity would lock a larger part of the distribution network, panel builders and other downstream players with the Combined Entity, thereby making entry further difficult.
62. The difficulty of building a brand, reputation and distribution network is explained by the MD of L&T in his interview regarding the Proposed Combination. He underscored the significance of L&T's distribution network and its wider reach, which admittedly took decades to build. The relevant extract of the statement is as follows:

“This kind of valuation in such business is not unusual because this leads to... this is a product line and this is specific product line and this tends to how it kind of valuation, because what you are taking is just not an electrical business, you are taking tool rooms which are of immense value, you are taking skill worksets which are of un-measurable values,

¹⁰ Page 10 of the submission dated 22nd October, 2018 of SEIPL and MRIPL

which are workers / engineers who have been there for ages. You are getting hold of marketing network, distributor and channel partner network, which takes decades for people to build up..... Therefore, one tends to view it as that and when you view it as that, you tend to pay the valuation for it because it will take you another 40 years to build up, you take 60 years to build a brand and recognition.”

(emphasis added)

63. The Overall assessment brings out the fact that there is no likeliness of a timely and sufficient entry as a competitive constraint to the Combined Entity. With the massive size of the Combined Entity, the cost of the rivals to compete and increase their presence in the market would be much higher than in the present market scenario.

G. Consideration of the public comments:

64. While the distributors and other affiliates of Schneider have indicated that the Proposed Combination is a welcoming deal, the other stakeholders have expressed that the Proposed Combination is likely to raise competition concerns. The summary of comments of the distributors and other affiliates of Schneider are as follows: (a) there are several competitors in the market; (b) the deal would allow the customers to get a complete product range under one roof; (c) the deal is beneficial to customers; and (d) the deal would result in higher quality of L&T products. On the other hand, the distributors of L&T have indicated that: (a) the combination will result in monopoly; (b) it will result in removal of an effective competitor; (c) As in the case of earlier acquisitions by Schneider, L&T products will be discontinued; and (d) replacement cost of L&T products will increase. While these reflect the views of L&T and Schneider’s affiliates, they do not substantiate or rebut the *prima facie* concerns of the Commission, with cogent material.
65. The Competitors have also filed relatively detailed comments. The comments of [REDACTED] are summarized as follows: (a) There is a strong preference to use single brand products; (b) the industry exhibits *de-facto* exclusivity of distributorship; (c) Combined Entity would corner a large portion of limited distributors; (d) the widespread distribution channel of the Combined Entity would act as an entry barrier; (e) Parties are 1st and 2nd largest players and therefore, buyers would not have any countervailing power; (f) prices will increase; and (g) wide portfolio of Combined Entity would result in lock in of large portion of limited distributors and smaller players like Eaton would not be able to compete. The comments of [REDACTED] are as follows: (a) there is a strong preference to use



single brand products in the industry; (b) Combination would significantly strengthen the Combined Entity in terms of market position; (c) Combined Entity would have bundled offerings of complementary portfolios; (d) existing competitors and new entrants would find it difficult to replicate such offerings; (e) Combined Entity will have pricing power; (f) there is low degree of countervailing buyer power; (g) the combination would increase the entry barriers; and (h) the deal would also reduce choice to the buyers. The other competitor response was from ***** which disputed the Acquirers' estimate of market share with respect to digital panel meters and also suggested anti-competitive consequences.

H. Parties' submission on the competition assessment

66. The Acquirers *vide* their submission dated 16th April, 2019 have pointed out certain factual inaccuracies in the Commission's analysis of competition harm in the proposal for modification (**PFM**) issued under Section 31(3) of the Act.
67. At the outset, it is clarified that the assessment of likely appreciable adverse effect on competition was done largely based on the information provided by the Acquirers. The information gathered from the competitors and customers in the relevant markets were used to verify competition concerns.
68. The Acquirers have disputed around six factual aspects mentioned in the PFM. It is observed that most of these facts were also mentioned in the notice dated 3rd October, 2018 issued to the Acquirers under section 29(1) of the Act (**Notice**). The Parties had sufficient opportunity to respond to these submissions at the time of responding to the notice issued under Section 29(1) of the Act. At the stage after the proposal under Section 31(3), the Act provides an opportunity to the parties to either accept the modification proposed by the Commission, under Section 31(4) of the Act, or suggest amendment under Section 31(6) of the Act. If the Parties decide to propose amendment under Section 31(6) of the Act, it is open for them to demonstrate that the modifications proposed by the Commission are disproportionate and alternatively, the amendment suggested by them is sufficient to address the likely appreciable adverse effect on competition. However, at this stage, placing objections to the factual aspects contained in the Section 29(1) of Act, is belated.
69. Further, in order to place the aforesaid objections on record, the Acquirers have relied upon a market survey commissioned by them, *inter alia*, to assert that the concerned



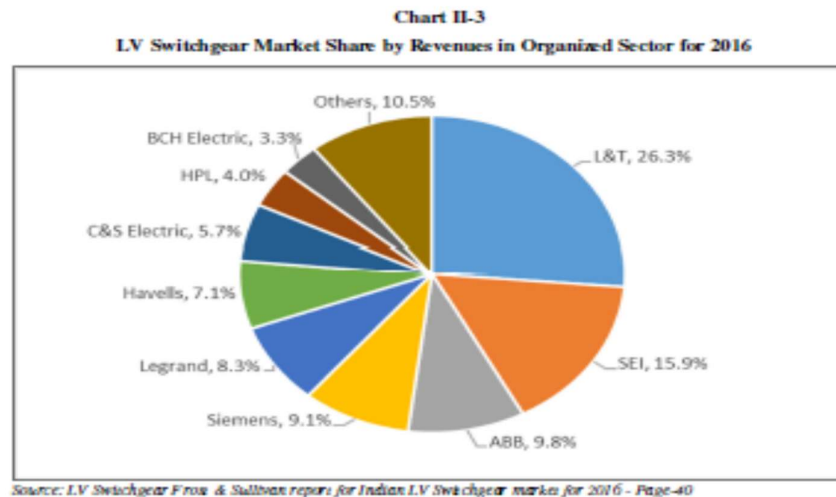
markets are competitive and thus dispute the competitive harm pointed out in the PFM issued under Section 31(3) of the Act. It is observed that the report of the said market survey is dated March, 2019 and appears to have been conducted after the issuance of PFM on 16th January, 2019.

70. In this regard, it is observed that Section 29 of the Act provides the procedure for investigation into combinations and Section 31 deals with orders that could be passed by the Commission thereon. If the Commission is of the *prima facie* view that the proposed combination is likely to cause an appreciable adverse effect on competition, it shall issue a notice to the parties under Section 29(1) of the Act to show cause in writing, as to why investigation should not be conducted in the matter. Subsequently, the parties may provide their response along with such evidence / material, which in their view demonstrates that investigation is not required. Even after considering the response of the parties, if the Commission is still of the *prima facie* view that the proposed combination is likely to cause an appreciable adverse effect on competition, it would direct the parties to publish the details of the combination under Section 29(2) of the Act. Section 29(3) of the Act provides for Commission calling the public to file their written objections, regarding the proposed combination. After receipt of such objections, the Commission may ask the parties to furnish such information as may be required by the Commission under Section 29(4) of the Act. After this stage, the Commission has been provided a period of 45 days under Section 29(6) of the Act to deal with the case in accordance with Section 31 of the Act.
71. A combined reading of the procedure under Section 29 of the Act, the orders and modifications that could be ordered / accepted under Section 31 of the Act and the statutory time period provided for inquiry, suggest that it would not be appropriate for the parties to the combination to submit new evidences after the stage contemplated under Section 29(5) of the Act, particularly after the issuance of proposal for modifications under Section 31(3) of the Act. The period of 45 days provided under Section 29(6) of the Act, is to assess the material on record including the submissions already given by parties, competitors and other stakeholders regarding the proposed combination. If the parties or other stakeholders fail to provide their views / objections within the respective stages under Section 29(1), (3), (4) and (5) of the Act, it is not open for them to adduce new material / evidence during the 45 days given to the Commission under Section 29(6) of the Act. If one contemplates otherwise, the combination inquiry would be a never ending process without any finality.



72. With respect to the market survey conducted by the Parties, it is observed that the same is a new material / evidence that has not been provided by the Parties in response to the notice under Section 29(1) or at any time before the completion of investigation and issuance of the PFM under Section 31(3) of the Act. While it is open for the parties to respond to the PFM based on the material on record and suggest amendments under Section 31(6) of the Act, it is not open for them to create and introduce new material to dispute the competition harm that has been found after a detailed investigation of stakeholders and the parties. Thus, the Commission is not inclined to consider the belated market survey submitted by the Acquirers. However, the Commission would deal with all the objections raised by the Acquirers *de hors* the market survey:
73. **Objection 1:** The Commission in the PFM notes that “*the only comparable competitors are ABB and Siemens and that they would be significantly smaller post the Proposed Combination.*” Such a finding was submitted as incorrect on the premise that Siemens and ABB are larger enterprises with more revenue, capabilities and portfolio in medium and high voltage segments. Fact and figures relating to Siemens and ABB were provided to substantiate their size in terms of revenue, globally as well as in India.
- 73.1. It is observed that the impugned observation is contained in the notice issued under Section 29(1) as well as the proposal under Section 31(3) of the Act. The said observation was made in the context of market position of Schneider, L&T and their competitors in the overall market for LV switchgears in India. This finding on market position is not only based on the revenues of the competitors in LV switchgear industry but on a holistic appreciation of the market conditions including industry characteristics, entry barriers - brand significance, distribution network and customer habits. It may be a fact that the overall revenue of Siemens and ABB is higher than L&T and Schneider but the focus of assessment in the instant matter is not to determine big companies, in terms of revenue, but to appreciate their *market position* in the concerned cluster markets, product segments as well as the overall LV switchgear industry. The competition assessment entails examination of competitive constraints in the relevant markets and the extent to which those would be lost because of the Proposed Combination.
- 73.2. It is not the case of the Commission that Siemens and ABB are small enterprises. Rather, the impugned finding states that ABB and Siemens are comparable competitors to Schneider and L&T in LV switchgear industry today and after the Proposed Combination, their relative position *vis-à-vis* the Combined Entity would be significantly smaller.

73.3. Revenue of ABB and Siemens in India was provided by the Acquirers to suggest that these enterprises are larger than the Acquirers. However, the figures provided apparently include their revenues from all business operations. One of the appropriate measure to gauge the size of the competitors in LV switchgear industry is to consider the revenue of these players from that business only. If one were to argue that huge revenues alone represent market position, the same would result in a wrong competition assessment. Even today, the overall revenue of Siemens and ABB may be higher than L&T and Schneider, but their revenue and market position in the LV switchgear industry is lesser than L&T and Schneider. This is also obvious from the economist report submitted along with the notice filed under Section 6(2) of the Act, where¹¹ size of different players in LV switchgear industry, in terms of revenue has been discussed. For ease of reference, the pie chart of revenue market share of competitors in LV switchgear industry provided in the said report is reproduced below:



73.4. The Acquirers have not provided any material to show that the impugned finding of the Commission is erroneous in relation to the market position of the competitors in the LV switchgear industry. Thus, the Commission does not see any merit in the contention of the Acquirers.

74. **Objection 2:** The Commission in the PFM erroneously notes that “L&T and Schneider have the widest range of offerings in the LV switchgear market in India. The next largest competitor would be around three times smaller than the combined entity. The

¹¹ Page 23 of the Report



consolidation would enable the combined entity to push its portfolio to the distributors by way of bundled offerings, rebates, volume discounts, etc.”

- 74.1. It is relevant to note that the impugned statement is a *prima facie* finding in the notice issued under Section 29(1) of the Act. After a detailed investigation of the customers, competitors and other stakeholders, the Commission in the PFM has concluded that *‘the Proposed Combination is a consolidation of two closest competitors in the LV switchgear industry in India who are also the first and second leading players. It is seen that there is a strong preference for use of same brand of products in building a switchboard and thus a player offering complete portfolio of components has an inherent advantage. L&T and Schneider have the widest range of offerings in the LV switchgear market in India. The next competitor would be around three times smaller than the Combined Entity. The Proposed Combination would thus confer the Combined Entity the ability to increase price in these markets [Section 20(4)(e)]. Further, the extent of competitive constraint that would remain in the market would be insufficient to address the anti-competitive incentives of the Combined Entity, as the Proposed Combination is likely to bring an end to the vigorous and effective competition [Section 20(4)(f) and (i)]’.*
- 74.2. It is observed that the impugned observation was partially reproduced by the Acquirers. The first part of this finding states that *‘it is seen that there is a strong preference for use of same brand of products in building a switchboard and thus a player offering the complete portfolio of components has an inherent advantage’.* This is a significant feature of the industry and this fact has not been disputed by the Acquirers. It is in this context that a larger portfolio of a switchgear manufacturer helps it in being a one-stop shop for customers to meet all their requirements.
- 74.3. The investigation has revealed that, for a project, it makes technical and commercial sense to buy different products from one brand rather than sourcing them from different brands. The Acquirers as well as the competitors of the Parties have agreed to this fact. For instance, ******* in its response dated 16th August, 2018 states that *‘A merger of this scale enables the entity to combine complementing portfolio combinations into bundled offerings which creates a very strong market position with low degree of countervailing power in the market. It will be extremely difficult to replicate these bundled offerings by either an entrant or a competitor. Hence, this dominance creates appreciable adverse*

effect to competition and may likely significantly increase the market entry barriers for any SME/new entrant to exist independently in one or more switchgear products...' (emphasis added). **** on the other hand, in its response to the publication under Section 29(2), has stated that '*panel builders, in India, are also inclined towards sourcing all the constituent products/solutions assembled into the same panel from a single manufacturer owing to the assurance of compatibility of the same brand of products/solutions and the inherent costs involved in conducting a compatibility test for products/solutions sourced from different manufacturers before commercializing such a combination of products/solutions. Moreover, the requirement for distributors/stockists and panel builders to have adequate knowledge of the products/solutions acts as an entry barrier into the distribution channel for E&A products/solutions... as a result of the Proposed Transaction, the **combined Schneider/L&T entity will be able to leverage a large portion of this limited pool of distributors / stockists and panel builders, the Proposed Transaction may foreclose the access to the distribution channel for competing manufacturers of E&A products/solutions***' (emphasis added).

- 74.4. The fact that the Parties have the widest portfolio in LV switchgears is evident from the submission dated 22nd October, 2018 of the Acquirers, wherein, it was stated that '*While comparing the width of portfolio across 29 Overlapping Products/Solutions, it may appear that only 5 competitors have a wide portfolio, i.e., **L&T (29), Schneider (29), Siemens (23), ABB (20) and C&S (16)**. Such global and Indian giants like ABB, Siemens and C&S will continue to exert a competitive constraint on the combined entity post the Proposed Combination*' (emphasis added). While the Acquirers claim that ABB, Siemens and C&S are sufficient constraints in the market after the Proposed Combination, the investigation has revealed that the exit of L&T, an important competitor in the market, would result in significant reduction of competition and that the cost of the rivals to compete and increase their market presence would be higher than the present market scenario.
- 74.5. The Acquirers have alluded that the impugned observation is on the basis of market share and change in HHI alone. They have made further reference to the cases approved by the Commission and the European Commission (EC) to suggest that market share alone cannot be the basis to come to the impugned observation. However, the Commission's observation is not based only on market share. The findings of the Commission in the proposal issued under Section 31(3)

of the Act are based on a detailed investigation and a holistic appreciation of market characteristics including the customer habits and entry barriers – brand and distribution network. Thus, it would be erroneous to suggest that the assessment and finding of the Commission including the impugned observation is based only on market share and change in HHI. It is further noted that the competition dynamics and characteristics of the markets involved in those cases are much different from the market(s) that are in question in the present matter. Thus, the cases cited by the Acquirers are of no relevance.

75. **Objection 3:** As regards the entry into the relevant market, the Parties have contended that the Commission '*in the PFM erroneously notes that there is no likeliness of an entry that would be timely and sufficient in scope so as to act as a competitive constraint to the resultant entity of the proposed combination*'. It has also been contended that no analysis has been done to establish that new entrants will be unable to impose any competitive constraint on combined entity.

75.1. The PFM has discussed the entry factors at length. Further, paragraphs 48 to 56 herein also bring out the assessment of contestability of the relevant markets. Thus, it is erroneous to state that the Commission has not done any assessment regarding entry barriers.

75.2. The Commission has clearly brought the standards considered to gauge competitive constraints exerted by entries. An entry to be a competitive constraint has to be timely, likely and sufficient to constrain the potential anticompetitive outcomes of the Proposed Combination. These cumulative standards were tested in the facts and circumstances of the case, to arrive at the impugned finding. An in-depth examination of the inputs provided by competitors, stakeholders and the Acquirers was undertaken. There is sufficient material on record to suggest that creating an optimal distribution network and brand recognition in this industry are the most significant barriers in the market. Although, the Acquirers have alleged that the Commission has not carried out any entry assessment, they have not provided any material to demonstrate that the market is contestable and that the determination of the Commission is erroneous. However, the assessment of the Commission has shown that even though some of the global players, entered the Indian market, they were not able to gain a presence of competition significance.

76. **Objection 4:** It has been contended that the Commission in the PFM and the Minutes of the Commission erroneously notes that the *market shares of competitors have remained static in the industry over a period of time.*

76.1. The above observation was made based on the submission of the Acquirers themselves. The relevant position of PFM states as follows: *Coming to the facts of the instant case, it is observed that the markets in question are well evolved and the market shares/ position of the premium brands (viz. Schneider, L&T, ABB and Siemens) is almost constant over a period of time. The Parties themselves in their submission dated 22nd October, 2018 have admitted that “overall market shares have not changed significantly in the 3 years for which the analysis has been done, as 3 years is too short a period to witness significant change at a macro level.¹²”* This observation was recorded in the entry assessment in the context of overall LV switchgear industry.

76.2. Now the Acquirers have claimed that the market share at an individual product level has changed in 25 instances over five percentage points. This includes Overload Relays, which is one of the six high market share products. However, no further submission has been made to demonstrate that six products viz. ACBs, MCCBs, MPCBs, SDFs, Overload Relays and Contactors, where the combined market share of the Parties is higher than 40%, are dynamic markets where the market positions of the competitors have undergone considerable change. To understand this further, the market share estimate provided by the Acquirers for 2014 to 2016, for the six high market share products, is reproduced below:

Table 5: Parties estimate of Market shares for Overload Relays

Overload Relays			
Year	2014	2015	2016
SEI	15-20%	15-20%	20-25%
L&T	45-50%	45-50%	35-40%
Siemens	15-20%	15-20%	15-20%
ABB	5-10%	5-10%	5-10%
C&S electric	10-15%	10-15%	10-15%
Eaton	0-5%	0-5%	0-5%
BCH Electric	0-5%	0-5%	0-5%
Others	0-5%	0-5%	0-5%

¹² Para 16 at page 8 of the submission dated 22nd October, 2018 of SEIPL and MRIPL

Table 6: Parties estimate of Market shares for SDF

Switch Disconnecter Fuse (SDF)			
Year	2014	2015	2016
SEI	0-5%	0-5%	0-5%
L&T	50-55%	45-50%	45-50%
ABB	5-10%	5-10%	5-10%
Siemens	25-30%	25-30%	25-30%
C&S Electric	5-10%	5-10%	5-10%
Havells	5-10%	5-10%	5-10%
Others	0-5%	0-5%	0-5%

Table 7: Parties estimate of Market shares for MPCB

Motor Protection Circuit Breaker (MPCB)			
Year	2014	2015	2016
SEI	40-45%	40-45%	40-45%
L&T	10-15%	10-15%	10-15%
Siemens	25-30%	25-30%	25-30%
ABB	5-10%	5-10%	5-10%
C&S Electric	0-5%	0-5%	0-5%
Others	5-10%	5-10%	5-10%

Table 8: Parties estimate of Market shares for ACB

Air Circuit Breakers (ACB)			
Year	2014	2015	2016
SEI	15-20%	15-20%	15-20%
L&T	20-25%	20-25%	20-25%
Siemens	15-20%	15-20%	15-20%
ABB	25-30%	25-30%	25-30%
C&S Electric	5-10%	5-10%	5-10%
Others	5-10%	5-10%	5-10%

Table 9: Parties estimate of Market shares for MCCB

Moulded Case Circuit Breakers (MCCB)			
Year	2014	2015	2016
SEI	15-20%	15-20%	15-20%
L&T	20-25%	20-25%	20-25%
ABB	15-20%	15-20%	15-20%
Siemens	10-15%	10-15%	10-15%
C&S	5-10%	5-10%	5-10%
Others	20-25%	20-25%	15-20%

Table 10: Parties estimate of Market shares for Contactors

Contactors			
Year	2014	2015	2016
SEI	20-25%	20-25%	20-25%
L&T	25-30%	25-30%	25-30%
Siemens	15-20%	15-20%	15-20%
ABB	10-15%	10-15%	10-15%
C&S electric	5-10%	5-10%	5-10%
Eaton	0-5%	0-5%	0-5%
BCH Electric	0-5%	0-5%	0-5%
Others	5-10%	5-10%	5-10%

76.3. The above estimate was given by the Acquirers *vide* their submission dated 14th August, 2018. As may be seen above, the market share in respect of all the six high market share products has not seen any significant fluctuation between 2014 and 2016. There is not even a single instance where the market share has fluctuated beyond 4% on a year on year basis. While the above data may not be as accurate being only an estimate of Schneider, one of the strong LV switchgear brands in India, it does reflect its understanding of the sales of different participants. This does not indicate any fluctuation of sales amongst competitors that has competition significance. Thus, it can be concluded that the overall market share of competitors in LV switchgear industry as well as the six high market share products have remained constant, over the said three years.

76.4. It needs to be appreciated that the entire discussion in the PFM in relation to static nature of the market share was in the context of gauging whether it is pragmatic for an entrant to penetrate into the relevant markets and become a competitive constraint on the Combined Entity, within a reasonable period. The Acquirers have not given any cogent material to show that the market is contestable. While the Acquirers have sought to demonstrate significant revenue growth of the entrants, the performance of the entrants has not been sufficient to constrain the incumbents. The investigation of the stakeholder including competitors and customers revealed that achieving brand recognition and establishing an optimal distribution network is a challenging and a time consuming process. All the competitors except one¹³ indicated that they have not observed any entry into the LV switchgear industry that has turned out to be a competitor to L&T and

¹³ One of the competitor respondent indicated ABB and Siemens as entrants during the last 5 years but they are present in the market for a long time.



Schneider in the last five years. The details provided by the Acquirers regarding the performance of entrants between 2014 and 2016 itself show that they have not been able to be a viable competition constraint on Schneider despite being present for a relatively long time in the market. These details are reproduced at Table 4, paragraph 54 above.

77. **Objection 5:** It has been contended that the Commission in the PFM erroneously notes that the *parties are the first and second competitors in the industry*. Product wise market share of competitors has been provided to suggest that Schneider and L&T are not market leaders in 18 of the 29 overlapping products.

77.1. It is observed that the impugned finding is in the context of the overall market for LV switchgears in India. The Acquirers have not been able to provide any material to negate the observation of the Commission. Similarly, the Acquirers have not provided any detail to dispute the leading market position of the Acquirers with respect to the six high market share products. Thus, the relevance of other players being market leaders in respect of these products is limited and does not negate the combined market position of Schneider and L&T.

77.2. The Commission has not disregarded the fact that panel builders although use same brand of products across a LV panel, they may also source from different brands for different projects. It is not the case of the Commission that there is no competition in the LV switchgear market. The investigation has revealed that L&T, Schneider, ABB and Siemens are known brands of LV switchgears and the competition amongst them is resulting in better price and other benefits to the consumers. However, if L&T were to exit the market, the same would result in significant reduction of competition resulting in appreciable adverse effect on competition.

77.3. The Acquirers have relied upon the statement of 1st and 2nd electrical consultant to suggest that panel builders shortlist 3-4 players in their recommendation to the customers. According to them, this indicates that the LV market is competitive and contestable. However, both these consultants have informed that they always advise use of single brand across an LV panel. All the other Electricity Consultants have also confirmed this position. On the Proposed Combination, the 1st Electricity Consultant stated that *“L&T has a large coverage – upto the farmer. It has models, which are continuing since 1970s. No one else has that reach. L&T serves all segment customers...All the foreign players like Schneider, Siemens and*



ABB are selling components at a very high price in other countries than what is their price in India. Even in China, it is sold at a higher price than India. The reduced price in India is attributable to competition given by L&T and not due to higher purchasing power in other countries. There is absolute commonality between Schneider and L&T in terms of product ranges. This merger is not a case of consolidation, which is competing or increasing the portfolio of the parties. The reasons could be to use the facilities of L&T, eliminating of competition as in the case of Schneider's acquisition of Crompton, S&S Chennai, Meher Capacitors, Conzerv and Protec. Schneider likely to discontinue L&T products over a period of time, as they have done earlier in other acquisitions". The 2nd Electricity Consultant has stated that "Healthy competition in the market will be lost. Schneider may be monopolistic. Prices may go high. Siemens and ABB has presence and/or availability issues. L&T has maximum market when it comes to TTA... There is potential of discontinuing L&T products by Schneider. Therefore, we are required to inform this fact to the client and ask them to take a call from a maintenance/replacement point of view also".

- 77.4. It has also been contended that the Commission has failed to consider the GUPPI analysis provided by the Acquirers, which demonstrates that Schneider would not enjoy pricing power after the combination. The Commission has given a careful consideration to the GUPPI analysis given by the Acquirers. It is noted that they have used their estimate of market share of the competitors to compute the diversion ratios, which is one of the fundamental parameters to conduct GUPPI. However, the investigation by the Commission has revealed a significant variation to market share estimates of the Parties with respect to ACBs, MCCBs, Contactors and Overload Relays. Further, the base price that has been taken for the analysis is also not reflective of the actual price at which they sell their products. The investigation including the submission of the Parties suggest that the offer price could significantly vary from list price depending on various factors including the quantity of demand, total value of purchase and counter offer by other manufactures. While admitting that list price of SEIPL and L&T are significantly different from the actual realized price for the overlapping products, the Acquirers have used internal estimates of SEIPL for realized value without corroborating the same. Further, the prices differ from customer to customer and project to project, *etc.* Thus, an appropriate analysis would entail assessment of GUPPI on the basis of actual price at which they are sold in the market and not the list price.



I. Final Observations

78. Based on facts and submissions contained in the notice, other material on record and the foregoing assessment, the Commission is of the opinion that the Proposed Combination, *inter alia*, is likely to result in the following harm to competition:
- 78.1. the Proposed Combination is a consolidation of two prominent competitors in the LV switchgear industry in India who are also the first and second leading players in terms of sales and distribution reach. It is seen that there is a strong preference for use of same brand of products in building a switchboard and thus a player offering complete portfolio of components has an inherent advantage. L&T and Schneider have the widest range of offerings in the LV switchgear market in India. The next competitor would be around three times smaller than the Combined Entity. The Proposed Combination would thus confer the Combined Entity the ability to increase price in these markets [Section 20(4)(e)]. Further, the extent of competitive constraint that would remain in the market would be insufficient to address the anti-competitive incentives of the Combined Entity, as the Proposed Combination is likely to bring an end to the effective competition [Section 20(4)(f) and (i)];
- 78.2. The combined market share of the parties is higher than 40% in respect of ACBs, MCCBs, Overload Relays, Contactors, MPCBs and SDFs. These are also the six products which even the Acquirers admit to be clustered in general. Given the strong position of the parties in these products, the Combined Entity would have incentives to discontinue the present offerings of L&T [Section 20(4)(i)] or Schneider and increase price [Section 20(4)(e)]. Thus, the proposed combination is likely to eliminate one of the most competitive option/ economic choice to the consumers [Section 20(4)(f)];
- 78.3. The market investigation of stakeholder suggest that L&T is the most entrenched brand in India with maximum installations. Thus, discontinuation of its offering would lead to increase in the cost of replacement as the replacement with other brand products is time consuming and involve alteration to the existing architecture of the given panel [Section 20(4)(g)];
- 78.4. besides the loss in vigorous and effective competition between two ranges of independent economic options in the market, the widest portfolio and reach of the



Combined Entity would lock a larger part of the distribution network, panel builders and other downstream players with the Combined Entity, thereby making entry further difficult. Thus the extent of vertical integration in the market would create a significant barrier to entry [Section 20(4)(j) and (b)];

- 78.5. the degree of contestability in markets for LV switchgears market(s) in India is low and there is no likelihood of an entry that would be timely and sufficient in scope so as to act as a competitive constraint to the resultant entity of the Proposed Combination. The response of the competitors and customers shows that players offering limited LV products cannot act as a competitive constraint to the resultant entity, which would be dominant to such an extent that it could drive the price, quality and commercial culture of the LV industry. Further, establishing a brand and optimal distribution network is a time consuming process in the industry, which has also been stated by Managing Director of L&T [Section 20(4)(b)]; and
- 78.6. With the massive size of the Combined Entity, the cost of the rivals to compete and increase their presence in the market would be much higher than the present market scenario [Section 20(4)(f)].
79. Earlier the parties had claimed certain benefits resulting from the combination such as employment, FDI, *etc.* However, none of these were shown to be specific to the Proposed Combination, as they all can be achieved through other means, also. Thus, the unverified and non-specific efficiencies, if any, cannot be taken into consideration as an advantage or benefit resulting from the Proposed Combination [Section 20(4)(m) and (n)].
80. Pursuant to the investigation conducted into the Proposed Combination, the Commission is of the opinion that the Proposed Combination is likely to result in reduction of competitive/economic choice to consumers, increased price and entry barriers. If the Proposed Combination is effected, other things remaining the same, the extent of loss of competitive constraints in the concerned markets would be huge and those that prevail would be insufficient to constrain the anti-competitive incentives and conduct of the Combined Entity. Thus, upon consideration of various relevant factors including those mentioned in clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (m) and (n) of Section 20(4) of the Act, the Commission is of the view that the Proposed Combination is likely to result in appreciable adverse effect on competition.



J. Modifications to address appreciable adverse effect on competition:

81. The primary purpose of the remedy, if any, in the instant case would be to preserve the present independent economic options / choices available to the consumers that would be lost because of the Proposed Combination. The Commission is of the opinion that modifications should be such that they allow for establishment of independent competitor(s) in the relevant market(s) or strengthen the existing competitor(s) for the concerned markets. However, it should also be borne in mind that the remedies / modifications shall have a close nexus and proportional, to the theory of harm.
82. The Commission was of the view that the likely appreciable adverse effect on competition could be suitably addressed by modifications to the combination. Accordingly, the Commission, to alleviate the likely appreciable adverse effect on competition, *vide* letter dated 16th January, 2019 proposed divestment of L&T's business in relation to six LV switchgear products [*viz.* ACB, MCCB, MPCB, Contactors, Overload Relays and SDF's] having high market shares (**PFM**). To achieve the above purpose, the Commission identified divestment of two plants of L&T at Ahmednagar and Vadodara to an Approved Purchaser. The Commission noted that according to the Acquirers, these six products are the main LV components generally clustered together in a panel. The Commission observed that divestment of L&T's business operations with respect to these six high market share products, along with access to its distribution network /channel partner, *etc.*, to an appropriate buyer would enable it to substitute the competition exerted by L&T by becoming an independent competitor in the relevant markets.
83. In response, the Acquirers *vide* submissions dated 16th April, 2019 *inter alia* submitted that modifications proposed by the Commission are unviable and disproportionate for the following reasons:
- (a) Both plants are multi-product integrated plants with many products beyond the Six Products. The process will be highly disruptive and will need significant expenditure further increasing cost of production and result in increase in prices. Given the excess capacity in the market, this would also be detrimental to the approved purchaser who instead of focusing their resources on building a brand, would have to expend them on purchasing and up keeping plants. Furthermore, personnel and R&D that are common across products would be indivisible as



well. This would effectively defeat the objective of the divestment as envisaged by the Commission.

- (b) PFM will effectively result in SEIPL, L&T and the approved purchaser(s) simultaneously using the same L&T brand leading to (a) market confusion (L&T brand is used for several businesses); (b) inability of multiple parties using the L&T brand (with only part of the portfolio) to participate in government tenders; and (c) concerns on warranty and replacement for consumers, creating difficulty in monitoring and implementation, as well as safety and liability concerns.
 - (c) Sales and marketing teams and senior resources in R&D teams are common for the business and not dedicated to these Six Products only. The livelihood of several plant workers and vendors dependent on the plant will be lost.
 - (d) Customer and vendor contracts are for projects and not for individual products, making such contracts impossible to novate.
 - (e) Inequitable situation for L&T, which should not be forced to give its brand to anyone who qualifies as an approved purchaser, given L&T's reputation and strong cultural ethos.
84. The Acquirers have also submitted that the intended effect of the remedies proposed by the Commission could be achieved by way an alternative set of remedies that are equally efficient and sufficient to eliminate the possibility of appreciable adverse effect on competition in India, while enabling the Parties to consummate the Proposed Combination.
85. The Acquires have proposed an Alternate Remedy Proposal, which envisages strengthening of existing LV manufacturers by offering them products under a white labelling arrangement on a long-term basis, eventual transfer of technology on a non-exclusive basis and removing exclusivity of their distribution network. In addition to the above, the Acquirers have proposed behavioural remedies including price mechanism, export commitments, non-rationalisation of their product range and maintenance of their R&D expenditure that are stated to supplement the objectives of modifications.



86. Under their Alternate Remedy Package, the SEIPL have offered that it would allocate to third party LV Switchgear manufacturers, which in the Commission's opinion need to be strengthened to compete more effectively in the Indian market, white labelling product manufacturing services for the Five Products of L&T viz. (ACB, MCCB, Contactors, Overload Relays, and SDF), solely for products to be sold in the Indian market for product ranges existing as of the date of Closing and undertakes to allocate up to *** of the installed capacity for each of the Five Products of L&T owned and manufactured at L&T's plants, as on the date of Closing for a period of 5 years from the date of Closing. However, if SEIPL exports up to *** of the installed capacity for each of the Five Products of L&T which are owned and manufactured at L&T's plants as on the date of Closing, then the annual installed capacity allocated for white labelling above will be reduced proportionately to the extent of such exports for such year on a set-off basis. The scope of the products to be white labelled would not include MPCB of L&T as it does not manufacture the same. L&T has been sourcing MPCB's from a third party on a white labelling basis. However, Siemens, ABB and their successors would not be eligible for availing the said services as they already have a market position of competitive significance.
87. The Acquirers have relied upon the decision of the European Commission (EC) in *ABB / General Electric Industrial Solutions (Case No. M.8678)*, to support their contention that white labelling is an effective alternative to divestment of the high market share products. This decision also related to a recent merger in LV switchgear industry, wherein the European Commission noted that *"the responses to the market investigation supported the Notifying Party's view that it is common in the industry to enter into brand label agreements to complete one's product portfolio. The majority of competitors responding to the market investigation stated that they enter into brand label agreements, as buyers, sellers or both, in order to fill gaps in their product portfolio. In fact, GEIS is also itself active in a number of product markets by way of brand label agreements."* The Commission notes that *** out of the 29 overlapping products are not manufactured by L&T but procured from third parties on a white labelling basis. Given these factors, the Commission acknowledges that white labelling is an industry practice in many of the products in LV switchgear industry.
88. The Acquirers have further offered that at the end of the 5 year term of the white labelling remedy, SEIPL would provide a mutually acceptable, non-transferable, non-sub licensable, royalty bearing non-exclusive technology license for a period of 5 years to a



single third party that had availed white-labelling for any of the Five Products owned and manufactured by L&T from SEIPL which satisfies the prescribed offtake obligation.

89. The Acquirers have, *inter alia*, relied upon the decision of the EC in *Apollo Group/Bakelite AG* (Comp/M. 3593), where the combined market share of the parties in certain relevant markets were between 50-70% (depending on different definitions). The EC, considering the nature of the industry, accepted commitments which included existing end-users of the merging parties having the right to designate a single phenolic resin producer located in the European Economic Area ("EEA") to whom the merging parties would grant a license to use their technology being utilized in that end-users' products. It has been stated that the EC expected this remedy to significantly reduce end users' switching costs (and noted that it would increase their bargaining power as against the merged group) and concluded that a divestment remedy would have been disproportionate because the same production plants were also used to produce a variety of other resins.
90. The investigation has revealed that establishing a distribution network is a constraint in the industry. In order to further ensure that the entrants and existing players have an effective access to distributors, the Acquirers have offered that SEIPL would amend its Distributorship Agreement and Commercial Policy to remove any barriers which encourage *de facto* exclusivity (*i.e.*, deletion of termination clause, discontinuation of loyalty rebates). SEIPL would not include any term in its Distributorship Agreements and Commercial Policy or otherwise impose such stipulation, which is capable of creating *de facto* exclusivity. Further, for a period of 3 years from the date of Closing, SEIPL would not replace or increase any of the distributors as of the date of the Closing of the Proposed Combination. Furthermore, SEIPL will also publish the list of distributors on its website. With these set of distribution related remedies, the ability of any player, including those who lift products under white labelling arrangement, to build its distribution network is expected to be relatively easier than a market condition where such stipulation is not imposed.
91. The Commission notes that the primary purpose of remedy is to preserve the present independent economic options/ choices available to the consumers that would be lost because of the Proposed Combination. In the facts and circumstances of the case, the Acquirers have demonstrated that the LV switchgear players are multi-product firms and carving out specified product business alone may lead to inefficient outcomes and the purpose of the remedies proposed by the Commission could be achieved through alternative commitments. Given that white labelling is an industry practice with respect



to several LV switchgear products, the Commission is of the opinion that the proposed white-labelling arrangement coupled with transfer of technology would strengthen competitor(s) availing such services. The distribution related remedies would further enable an easier access to the distribution network. Any player with a vision to expand its business in the five products as well as leverage such position in the overall LV switchgear business could achieve a commendable position in the industry and act as a viable competitor to the Combined Entity as well as other players. With quality products of L&T and access to wider distribution network, the beneficiaries of the white labelling arrangement could also establish their brand in the market. The modifications proposed by SEIPL would provide the competitors with an opportunity to strengthen their portfolio of products and increase the viability of their own brand in a sustainable manner without incurring significant capital investment and enable them to become a competitor as credible as L&T. Thus, the modifications are expected to maintain the existing level of competition in the relevant markets through creation of a viable, effective, independent and long-term competitor(s).

92. The Acquirers have further suggested that they would also adopt a pricing mechanism whereby the average selling price of the six high market share products would not exceed the average net selling price of L&T for the preceding year. While this would not act as a price capping arrangement in every sale conducted by SEIPL, it is required to ensure that the average selling price of the six high market share products does not exceed the limit prescribed. The Acquirers have further offered remedies in relation to R&D, minimum export commitment and non-rationalisation of L&T products. The Acquirers have claimed that these remedies would supplement the objective and purpose of preserving effective competition in the relevant markets as was the case before the proposed combination. The details of the remedies and monitoring mechanism is enclosed as **Annexure A**.
93. It is observed that the Proposed Combination has been approved subject to the Compliance of the modifications offered by the Acquirers that are aimed at alleviating the appreciable adverse effects on competition discussed in the foregoing section. Thus, the remedial modifications offered and accepted are to be interpreted purposively to give effect to the objectives of offering them. Thus, SEIPL and /or its affiliates shall not make any commercial offer or engage in a dealing with respect to any or all of the LV switchgear products that has the effect of diluting the effect and /or objectives of the



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modifications offered by the Acquirers. Such conduct besides attracting proceedings for breach of modifications would also render the concerned person(s) liable to be proceeded against under the relevant provisions of the Act including Section 4 of the Act.

Monitoring Agency

94. The remedies offered by the Acquirers contemplate monitoring of various aspects therein. Therefore, the Commission shall, under Regulation 27 of the Combination Regulations, appoint an independent agency as Monitoring Agency for the purpose of supervision of the modifications provided herein and ensure that each of the Acquirers are in compliance with the same. The Monitoring Agency shall carry out the responsibilities arising out of Annexure A as well as the directions, if any, of the Commission from time to time.
95. The Acquirers shall file a report every year, on the compliance of the modifications offered and accepted herein, along with a narrative of how the remedies are working in the Indian market and a description of state of play of competition in the market (**Annual Compliance Report**). The date of closing of the Proposed Combination shall be the date every year within which the Annual Compliance Report has to be filed with the Commission.
96. The Monitoring Agency shall report any alleged non-compliance by the Acquirers and/or SEIPL, as the case may be, expeditiously with due assessment of the impugned conduct and recommendations thereof. Further, the Monitoring Agency may bring to the notice of the Commission any market condition or behaviour of the concerned parties that may have an implication on the observance of the modifications offered and accepted herein.
97. It is further clarified that the Commission may pass such directions as may be necessary to implement the modifications as well as address difficulties arising in unforeseen circumstances.



ANNEXURE A

A. DUTIES AND OBLIGATIONS OF SEIPL

98. SEIPL shall provide the Monitoring Agency with such co-operation, assistance and information, as the Monitoring Agency may reasonably require performing its tasks.
99. The Monitoring Agency shall have full and complete access to SEIPL's books, records, documents, management or other personnel, facilities, sizes and technical information necessary for fulfilling its duties under the order passed by the Commission ("Order") and SEIPL shall provide the Monitoring Agency upon request with copies of any document required by the Monitoring Agency, as the case may be.
100. SEIPL shall make available to the Monitoring Agency one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Agency with all necessary information for the performance of their tasks.
101. SEIPL shall also indemnify the Monitoring Agency, its employees and agents and hold each indemnified party harmless against any liabilities arising directly out of the performance of the Monitoring Agency's duties under the Order, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the indemnified party.
102. The Commission may share all confidential information proprietary of SEIPL in relation to L&T's Six Products with the Monitoring Agency, without its approval. The Commission may at any time request information from SEIPL that is reasonably necessary for the effective implementation of the Order.
103. Along with the annual compliance report, SEIPL will provide the Commission a narrative on how the remedies are working in the Indian market and a description on the state of play of competition in the market.



B. WHITE LABELLING

104. SEIPL undertakes to allocate to third-party LV switchgear manufacturers, which in the Commission's opinion need to be strengthened to compete more effectively in the Indian market (excluding ABB and Siemens and their successors) white labelling product manufacturing services for the Five Products of L&T owned and manufactured by L&T solely for products to be sold in the Indian market, for product ranges existing as of the date of Closing.
105. SEIPL undertakes to allocate for a period of 5 years from the date of Closing up to *** of the installed capacity for each of the Five Products of L&T, for the product ranges existing as on the date of Closing, which are owned and manufactured at L&T's plants as on the date of Closing. Further, in the event SEIPL increases the installed capacity for the Five Products of L&T at L&T's plants, then SEIPL undertakes to proportionately allocate up to *** of the increased installed capacity towards the white labelling remedy (which includes proportionate export increase for the maximum extent of *** of the increased installed capacity), for a period of 5 years from the date of Closing.
106. If SEIPL exports up to **** of the installed capacity for each of the Five Products of L&T which are owned and manufactured at L&T's plants as on the date of Closing, then the annual installed capacity allocated for white labelling above will be reduced proportionately to the extent of such exports for such year on a set-off basis.
107. The white labelling remedy would also ensure that the entity who is availing the white labelling product manufacturing services will also receive the benefit of the upgradation of the Five Products (if any, based on the continuous R&D efforts of SEIPL, post the Proposed Combination), during this period of 5 years.
108. In the event that there is no demand for white labelling and/or export, whether partial or up to the full allocated ** installed capacity, despite the use of commercially reasonable efforts of SEIPL consistent with the obligations of the order of the Commission, for the Five Products of L&T from all L&T plants where such products are manufactured, SEIPL undertakes that it will intimate the Commission, along with the measures taken by SEIPL to export and offer white labelling product manufacturing services, of its intention to use such capacity for any other purpose, ** month prior to using this capacity for any other purpose.



109. In this regard, SEIPL shall:

- 109.1. Within a period of ** months from the date of the Order of the Commission, under the supervision and monitoring of the Monitoring Agency, the first EOI will be published in 4 major newspapers, host the EOI on SEIPL's website and send the EOI to *****
*****.
- 109.2. Within a period of ** months from the date of publication of the EOI, the interested third-party LV switchgear manufacturers are required to respond to the EOI.
- 109.3. Within a period of ** months from the date of the Closing, submit details of the installed capacity for each of the Five Products of L&T which are owned and manufactured at L&T's plants, to the Monitoring Agency along with requisite documents as may be required by the Monitoring Agency;
- 109.4. SEIPL shall, under the guidance and supervision of the Monitoring Agency, activate an online portal for the management of the EOI process and to facilitate evaluation of the interests received from third-party LV switchgear manufacturers. The weblink to the online portal will be provided in the EOI. Interested third-party LV switchgear manufacturers shall have the option to submit their response to the EOI for the white labelling product manufacturing services at the online portal within a period of ** months from the date of publication of the EOI. Further, the Monitoring Agency shall be provided access to the online portal.
- 109.5. The interested third-party LV switchgear manufacturers are required to respond to the EOI within a period of ** months from the date of the EOI being published. Thereafter, SEIPL shall within a period of ** months from the expiry of the period provided to the third party LV switchgear manufacturers to respond to the EOI, negotiate the terms of the white labelling agreement with the interested third party LV switchgear manufacturers.
- 109.6. Within ** month post the period of negotiation of the terms of the white labelling agreement (as set out 109.5 above) and prior to execution of the white labelling agreement, SEIPL shall submit to the Commission the draft of the



white labelling agreement along with the details of interested third party LV switchgear manufacturers.

- 109.7. SEIPL will provide a copy of such executed agreement to the Monitoring Agency within a period of ** days from the date of the execution.
- 109.8. Submit details of receipt and fulfilment of orders for white labelling product manufacturing services received from third-party LV Switchgear manufacturers including returns, if any, on a ***** basis to the Monitoring Agency for a period of 5 years from Closing; and
- 109.9. Provide the white labelled products to the third-party LV switchgear manufacturers with whom SEIPL has entered into a white labelling supply agreement at a price which is equivalent to ***** SEIPL shall submit a certification from a cost accountant to the Monitoring Agency that the white labelling products are supplied at ***** on a ***** basis for a period of 5 years.
110. In order to be eligible for the white labelling product manufacturing services, the third-party LV switchgear manufacturers must fulfill the following criteria:
- 110.1. The third-party LV switchgear manufacturer shall not have any material financial links (i.e., financial links amounting to at least 5% of SEIPL's or MacRitchie's (as the case may be) revenue in a requisite financial year) or structural links in India (whether directly or indirectly) with the Parties;
- 110.2. The third-party LV switchgear manufacturer shall have the financial resources to avail the white labelling product manufacturing services to become a viable and active competitor to SEIPL;
- 110.3. Siemens and ABB and their successors shall be excluded from availing the white labelling remedy; and
- 110.4. The third-party LV switchgear manufacturer shall not have any Investment in/ by any entity in India (whether directly or indirectly) with any party that has been disqualified in paragraphs 110.1 to 110.3 above.



C. NON-EXCLUSIVE TECHNOLOGY LICENSE

111. SEIPL undertakes to provide a mutually acceptable, non-transferable, non-sub licensable, royalty bearing non-exclusive technology license for a period of 5 years from the expiry of the white labelling remedy period, to a single third-party that avails of white labelling for any of the Five Products owned and manufactured by L&T from SEIPL which:
- 111.1. Has white label offtake for at least 3 continuous years of the product for which it seeks the technology license; and
 - 111.2. Has an average annual offtake of at least 10% of the installed capacity of such individual product for white labelling for the period of the white labelling remedy.
112. SEIPL shall to provide a mutually acceptable, non-transferable, non-sub licensable, royalty bearing non-exclusive technology license solely for manufacture and sale in India for the relevant products. The technology license shall be for product applicable patents and copyrights. No technical assistance or manufacturing assistance will be provided by SEIPL throughout the duration of the technology license.
113. Such non-exclusive technology license will be provided for only those particular product ranges and SKU's for which the licensee had white labelled from SEIPL and provided that the licensee meets the stipulated conditions mentioned above. SEIPL, shall provide the non-exclusive technology license at a reasonable commercial royalty rate.
114. In this regard, SEIPL shall –
- 114.1. Include in the EOI that any single third-party will be eligible to be considered for a non-exclusive technology license at the end of the 5-year period provided for white labelling in accordance with the terms and conditions mentioned above;
 - 114.2. At the expiry of the 5-year period provided for white labelling product manufacturing services, enter into a mutually acceptable, non-transferable, non-sublicensable, royalty bearing non-exclusive technology license agreement for



a period of 5 years with a single third-party based on the eligibility requirements as set out above;

- 114.3. Submit the name of the single third-party who will be given the license and the draft of the non-exclusive technology license to the Commission for its approval; and
- 114.4. Submit to the Monitoring Agency a copy of the executed nonexclusive technology license agreement within ****** days from the date of execution.

D. EXPORT

115. SEIPL undertakes to allocate for export up to at least ******* of the installed capacity for each of the Five Products of L&T which are owned and manufactured at L&T's plants as on the date of Closing, for a period of 5 years from the date of Closing.
116. If SEIPL exports up to ******* of the installed capacity for each of the Five Products of L&T which are owned and manufactured at L&T's plants as on the date of Closing, then the annual installed capacity allocated for white labelling above will be reduced proportionately to the extent of such exports for such year on a set-off basis.
117. In the event that there is no demand for white labelling and/or export, whether partial or up to the full allocated ******* installed capacity, despite the use of commercially reasonable efforts of SEIPL consistent with the obligations of the order of the Commission, for the Five Products of L&T from all L&T plants where such products are manufactured, SEIPL undertakes that it will intimate the Commission, along with the measures taken by SEIPL to export and offer white labelling product manufacturing services, of its intention to use such capacity for any other purpose, ******* month prior to using this capacity for any other purpose.
118. Further, SEIPL undertakes to export at least the minimum of the average of SEIPL's exports by volume for the preceding 3 years before the date of Closing for the Five Products of SEIPL for a period of 5 years.
119. In this regard, SEIPL shall –



- 119.1. Submit details of the installed capacity for each of the Five Products of L&T which are owned and manufactured at L&T's plants as on the date of Closing, to the Monitoring Agency within a period of ** months from the date of Closing, along with the requisite documents as may be required by the Monitoring Agency;
- 119.2. Submit details of the average volume of exports of the Five Products of SEIPL, for the preceding 3 years before Closing to the Monitoring Agency within a period of ** months from the date of Closing;
- 119.3. Submit on an *****, the details of the volume of exports for the relevant year of the Five Products of L&T from L&T's plants as on the date of Closing, where such products are manufactured to the Monitoring Agency for a period of 5 years from the date of Closing; and
- 119.4. Submit on a ***** basis, the details of the volume of exports of the Five Products of SEIPL to the Monitoring Agency for a period of 5 years from the date of Closing.

E. DISTRIBUTION

I. Number of Distributors

120. SEIPL undertakes for a period of 3 years from the date of Closing not to replace or increase any of the distributors as of the date of Closing.
121. In this regard, SEIPL shall –
 - 121.1. Within a period of ***** from the date of Closing, provide the list of distributors (of SEIPL and L&T) from the MIS of SEIPL as on the date of Closing to the Monitoring Agency;
 - 121.2. Publish the list of the distributors mentioned in 121.1 above, on SEIPL's website, within a period of ***** of the submission of such list to the Monitoring Agency;



- 121.3. Submit on an [REDACTED] the details of distributors in the respective financial year to the Monitoring Agency for a period of 3 years from Closing and also undertakes to submit a certification by an auditor for this purpose; and
- 121.4. Submit on an [REDACTED] the list of separated distributors in the respective financial year to the Monitoring Agency for a period of 3 years from Closing.

II. Amendments to SEIPL's Distributorship Agreements and Commercial Policy

122. SEIPL undertakes to amend the Distributorship Agreement and Commercial Policy to remove any barriers which encourage de facto exclusivity (i.e., deletion of termination clause, discontinuation of loyalty rebates). In addition to the amendments to SEIPL's Distributorship Agreement and Commercial Policy, SEIPL also undertakes not to include any term in its Distributorship Agreements and Commercial Policy or otherwise impose such stipulation which is capable of creating de facto exclusivity.

123. In this regard, SEIPL shall-

- 123.1. Submit within a period of [REDACTED] from the date of Closing, the amended draft of the distributorship agreements and commercial policy of SEIPL to the Monitoring Agency;
- 123.2. Submit within a period of [REDACTED] from the date of Closing and [REDACTED] for a period of 3 years, the revised representative executed agreements with the distributors to the Monitoring Agency; and
- 123.3. Submit on an [REDACTED], for a period of 5 years from the date of Closing, a confirmation regarding the discontinuation of loyalty bonus to the Monitoring Agency.

F. PRICING REMEDY

124. SEIPL offers to cap the average net selling price for the Six Products of L&T for a period of 5 years from the date of Closing, subject to adjustment up to the greater of the WPI applicable in India, or changes as per certified cost sheet for the Six Products of L&T (This includes reference which are part of the published price list).

125. In this regard, SEIPL shall –



125.1. Submit within a period of ********* from the date of Closing the list of the Six Products of L&T, composite average net selling price of L&T's Six Products for the year preceding the date of Closing along with MIS Report of L&T's invoices and other relevant documentation to the Monitoring Agency to determine the composite net selling price for the pricing remedy.

*****.

125.1.1. *****.

(a)

 *****.

(b)

 *****; and

(c)

 *****'

125.1.2. *****.

(a)

(b)

 *****.

125.1.3. *****.

(a)



(b)

*****.

125.2. Submit within a period of ***** from the date of Closing the latest audited cost sheets for Six Products of L&T available at the time of Closing.

125.3. Submit on an ***** the audited cost sheets of the Six Products of L&T, within ***** of publication of the audited financial statements to the Monitoring Agency for comparison for a period of 5 years from the date of Closing.

125.4. Submit on an ***** the composite average net selling price for the Six Products of L&T within ***** of the publication of the audited financial statements to the Monitoring Agency for comparison for a period of 5 years from the date of Closing.

125.5. Submit the GST returns in respect of L&T's Six Products to the Monitoring Agency every ***** for a period of 5 years from the date of Closing.

G. RESEARCH AND DEVELOPMENT

126. SEIPL offers the following commitment in relation to R&D for L&T's E&A business in India:

126.1. A minimum annual R&D spend for a period of 5 years from the date of Closing in line with L&T's average R&D spend in India for L&T's E&A business in India, in the last 3 years prior to Closing; and

126.2. Maintain stable R&D headcount of L&T in India for 5 years, in line with the headcount existing as of the date of Closing, except for any natural employee attrition.

127. In this regard, SEIPL shall –



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- 127.1. Within a period of [REDACTED] from the date of Closing, submit to the Monitoring Agency, headcount details of the R&D department of L&T's E&A business in operations in India as on the date of Closing;
- 127.2. Within a period of [REDACTED] from the date of Closing, provide details of L&T's average annual R&D spend in India for L&T's E&A business operations in India in the last 3 financial years preceding the date of Closing as reported in the audited financials of L&T to the Monitoring Agency;
- 127.3. From the date of Closing, submit on an [REDACTED] to the Monitoring Agency, the audited R&D expenditure of SEIPL for a period of 5 years; and
- 127.4. Submit headcount details of R&D department of SEIPL to the Monitoring Agency on an [REDACTED] for a period of 5 years from the date of Closing.

H. NON-RATIONALIZATION OF L&T'S LV SWITCHGEAR PRODUCTS

128. In relation to non-rationalization of L&T's LV switchgear products, SEIPL undertakes not to rationalize for a period of 5 years from date of Closing in the Indian market, any of L&T's existing LV switchgear products which are not under any withdrawal plan as on date of Closing. SEIPL reserves a right to replace functionally equivalent L&T products manufactured at L&T plants in the ordinary course of business.
129. In this regard, SEIPL shall –
 - 129.1. Within a period of [REDACTED] from the date of Closing, provide the list of L&T's existing LV switchgear products and the existing withdrawal plan, if relevant, of L&T in relation to its LV switchgear products as on the date of Closing to the Monitoring Agency; and
 - 129.2. Submit the list of L&T's existing LV switchgear products to the Monitoring Agency on an [REDACTED] for a period of 5 years from the date of Closing. The list shall include details of functionally equivalent product replacements, if any.
