

## COMMERCE COMMISSION

### Decision No. 509

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

**SCHNEIDER ELECTRIC SA**

**and**

**GERARD INDUSTRIES GROUP (“CLIPSAL”)**

**The Commission:** **Paula Rebstock (Chair)**  
**Donal Curtin**  
**Peter JM Taylor**

**Summary of Application:** The acquisition by Schneider Electric SA (“Schneider”) of 100% of the shares in Gerard Industries Group subsidiary (“Clipsal”).

**Determination:** Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.

**Date of Determination:** 7 October 2003

**CONFIDENTIAL MATERIAL IN THIS REPORT IS CONTAINED IN SQUARE  
BRACKETS**

## CONTENTS

CONTENTS .....	1
EXECUTIVE SUMMARY .....	2
THE PROPOSAL .....	4
THE PROCEDURES .....	4
THE PARTIES .....	4
<i>SCHNEIDER</i> .....	4
<i>CLIPSAL</i> .....	5
<i>OTHER RELEVANT PARTIES</i> .....	5
<i>Existing Competitors</i> .....	5
<i>Wholesalers</i> .....	5
<i>Electrical Contractors</i> .....	6
<i>Other</i> .....	6
<i>Previous Investigations</i> .....	6
INDUSTRY BACKGROUND .....	6
<i>STRUCTURE</i> .....	6
<i>CONDUCT</i> .....	8
MARKET DEFINITION .....	9
<i>Product Market</i> .....	9
<i>Functional Market</i> .....	10
<i>Geographic Market</i> .....	12
<i>CONCLUSION ON THE RELEVANT MARKETS</i> .....	12
<i>FACTUAL</i> .....	12
<i>COUNTERFACTUAL</i> .....	13
COMPETITION ANALYSIS .....	13
The New Zealand Markets for the Supply of Low Voltage Panel Boards for Residential Buildings (“The panel board market”) and the Supply of Wiring Devices and Cabling Systems (“The wiring device and cabling system market”).....	14
<i>MARKET CONCENTRATION</i> .....	14
<i>EXISTING COMPETITION</i> .....	16
<i>Conclusion on Existing Competition</i> .....	17
<i>POTENTIAL COMPETITION</i> .....	17
<i>Introduction</i> .....	17
<i>Barriers to Entry/ Expansion</i> .....	17
<i>Likelihood of Entry</i> .....	19
<i>Extent of Entry</i> .....	19
<i>Timeliness of Entry</i> .....	20
<i>Conclusion on Constraint from Potential Competition</i> .....	20
Other Competition Factors .....	20
<i>CONSTRAINT FROM BUYERS OR SUPPLIERS</i> .....	20
<i>ECANZ</i> .....	21
<i>Wholesalers</i> .....	21
<i>Conclusion on Constraint from Buyers or Suppliers</i> .....	22
<i>Conclusion on SLC in the Panel Board Market and the Wiring Device and Cabling System Market</i> .....	22
Overall Conclusion .....	22
Determination on notice of clearance .....	24
Appendix 1 .....	25

## **EXECUTIVE SUMMARY**

### **The Proposal**

1. A notice pursuant to section 66(1) of the Commerce Act was received on 25 August 2003. The notice sought Clearance for the acquisition by Schneider Electric SA (“Schneider”), of the core low voltage electrical distribution products and associated accessories of the Gerard Industry Group of companies (which is referred to in this Decision as “Clipsal”).

### **Market Definition**

2. The Commission concludes that, for the purpose of analysing this application, the relevant market is as follows:
  - The national market for the wholesale supply of low voltage panel boards for residential buildings (“the panel board market”); and
  - The national market for the wholesale supply of wiring devices and cabling systems (“the wiring device and cabling system market”).

### **Counterfactual**

3. The Applicant has not provided a counterfactual in its clearance application. As there is no evidence to indicate both Schneider and Clipsal cannot continue to operate independently in New Zealand, the Commission considers the appropriate counterfactual the status quo.

### **Competition Analysis**

#### *Existing Competition*

4. The Commission considers that the level of existing competition does not substantially change post acquisition due to the presence of HPM as a vigorous competitor and the presence of a number of other firms in the market able to respond rapidly in the event of a price increase by the merged entity. Products can be quickly imported to counter any effort by the merged entity to increase prices. These factors pose a significant constraint on the actions of Schneider/Clipsal post acquisition.

#### *Potential Competition*

5. The Commission concludes that there are not sufficient barriers to entry to deter expansion or new entry. Potential competition and expansion by existing entrants is likely to provide a constraint on the merged entity, and the industry as a whole.

#### *Countervailing Power*

6. The presence of several existing suppliers in New Zealand capable of providing product and the ability of wholesalers to purchase directly from overseas manufacturers would act as a significant constraint on the merged entity in the markets for the supply of low voltage panel boards and the supply of wiring devices and cabling systems.

### **Overall Conclusion**

7. The Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in:

- the national market for the wholesale supply of low voltage panel boards for residential buildings (“the panel board market”); and
  - the national market for the wholesale supply of wiring devices and cabling systems (“the wiring device and cabling system market”).
8. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition of the Gerard Industries Group wholly owned subsidiary Clipsal by Schneider Electric SA.

## THE PROPOSAL

9. A notice pursuant to section 66(1) of the Commerce Act was received on 25 August 2003. The notice sought Clearance for the acquisition by Schneider Electric SA (“Schneider”), of the core low voltage electrical distribution products and associated accessories of the Gerard Industry Group of companies (which is referred to in this Decision as “Clipsal”).

## THE PROCEDURES

10. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave notice agree to a longer period. Accordingly, an extension of time was sought and agreed to by the Applicant. A decision on the application was required by 10 October 2003.
11. In its application, Schneider has sought confidentiality for certain aspects of the application involving market share, marketing strategy and technical details. A confidentiality order was made in respect of the information for up to 20 working days from the Commission’s determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
12. The Commission’s determination is based on an investigation conducted by staff.
13. The Commission’s approach is based on principles set out in the Commission’s Practice Note 4.<sup>1</sup>

## THE PARTIES

### *Schneider*

14. Schneider is a French-based multi-national with 130 offices around the world. Schneider manufactures and distributes equipment for electrical distribution, industrial control, and automation.
15. Schneider’s core business in New Zealand involves low voltage and industrial control products, medium voltage switch boards, panel boards, components for panel boards, wiring devices, and industrial control and automation products. For the purposes of this Application, Schneider’s operations in the six categories outlined below are relevant for this Decision.
16. Schneider sells most of its products to wholesalers, who then distribute those products (together with a wide range of other competing suppliers’ products) to electrical contractors. Electrical contractors constitute the bulk of suppliers’ end-customers. However, as medium voltage products are sourced directly from suppliers, not through wholesalers, Schneider also sells some of its products directly to end-customers, in competition with wholesalers.

---

<sup>1</sup> Commerce Commission, *Practice Note 4: The Commission’s Approach to Adjudicating on Business Acquisitions Under the Changed Threshold in section 47 – A Test of Substantially Lessening Competition*, May 2001.

### *Clipsal*

17. The Gerard Industry Group of companies is an Australian based operation with a presence in 25 countries. They manufacture and distribute low voltage electrical accessories and electrical wiring devices most commonly sold under the well established, and industry recognised, “Clipsal” brand.
18. The Clipsal brand was launched in New Zealand in 1996 although industry participants have indicated Clipsal products under different brand names have been available since the early 1980’s. New Zealand now accounts for approximately [ ]% of the Gerard Group’s Pacific business, with Australia accounting for around [ ]%.
19. Clipsal’s business in New Zealand involves ‘low-end’, consumer-type products of low voltage only. Clipsal supplies low voltage final panel boards and wiring devices/systems with a focus on switches and outlet products. Clipsal sells all of its New Zealand products through wholesalers. Clipsal does not sell directly to end-customers.

### *Other relevant parties*

#### *Existing Competitors*

20. Hager is a major international supplier of electrical distribution products and sources its product from France and Germany. Hager entered the Australian market initially. Hager is currently a small player in the New Zealand market.
21. CH New Zealand is the current distributor of the Cutler-Hammer range of products. Cutler-Hammer is a global supplier of electrical control and power distribution products.
22. Legrand is a French company that operates globally and specialises in low voltage electrical equipment. Legrand has recently set up a New Zealand based operation.
23. HPM Industries Pty (“HPM”) is one of the largest manufacturers and suppliers of electrical accessories in New Zealand.
24. Australect Switchgear (“Australect”) is a manufacturer and supplier of a range of electrical distribution products and accessories.
25. Specialised Sales & Marketing is a supplier of a range of electrical distribution products and accessories.
26. Vynco is the current distributor of General Electric electrical distribution products in New Zealand.

#### *Wholesalers*

27. Power Base Group (“Power Base”) is one of the three major wholesalers in New Zealand. Power Base is a buying group that combines the buying power of a range of independent wholesalers and has national coverage.
28. Rexel NZ (“Rexel”) is a subsidiary of Rexel SA, a large French multinational electrical product wholesaler.
29. Crane Distribution NZ Limited (“Crane”) is a wholly owned subsidiary of Australian public company Crane Group Limited, an independent wholesaler with a broad range of electrical products.

30. J.A. Russell is a major independent wholesaler operating in the North Island. J.A. Russell is the largest member in the Power Base buying group.

#### *Electrical Contractors*

31. Allendale Electrical is a large electrical contractor operating in the Auckland region.
32. Bishman Electrical is a large electrical contractor operating in the Auckland region.
33. Ward Chandler Electrical is a large electrical contractor operating in the Auckland region.

#### *Other*

34. Electrical Contractors Association of New Zealand (ECANZ) has a membership of 1,355 businesses. Its members employ 7,000 electrical workers and have total annual combined sales of \$700 million. ECANZ has ten branches in a nationwide network of electrical businesses operating under the Safepower Assured brand.

#### *Previous Investigations*

35. The Commission has previously considered related activities in *Decision 463 Reyrolle Pacific Holdings Limited & VA Tech Reyrolle Pacific Limited, 01 July 2002* (“the Reyrolle Decision”) and *Decision 444 Mico Wakefield Ltd. and Mastertrade Ltd.* (“the Mico Decision”).
36. In the Reyrolle Decision, the Applicant submitted that there was a broad market for the supply of all types of 3kV – 33kV switchgear. However, the Commission determined that 11kV indoor switchgear, along with other types of switchgear, represented separate and distinct markets. The Commission found that while manufacturers could easily switch between producing different types of switchgear, those in the trade demanded specific types of switchgear which were not substitutable for each other.
37. The Commission found that the acquisition would not result in a substantial lessening of competition in any market due to strong competition from existing participants in the market, the constraint imposed by the ability of wholesalers to import competing products and low barriers to entry for new entrants.
38. In the Mico Decision the Commission defined a market for the supply of electrical products. The Commission found there were no barriers to entry likely to deter expansion or new entry to the electrical products markets and concluded that existing competition was sufficient to constrain the merged entity.

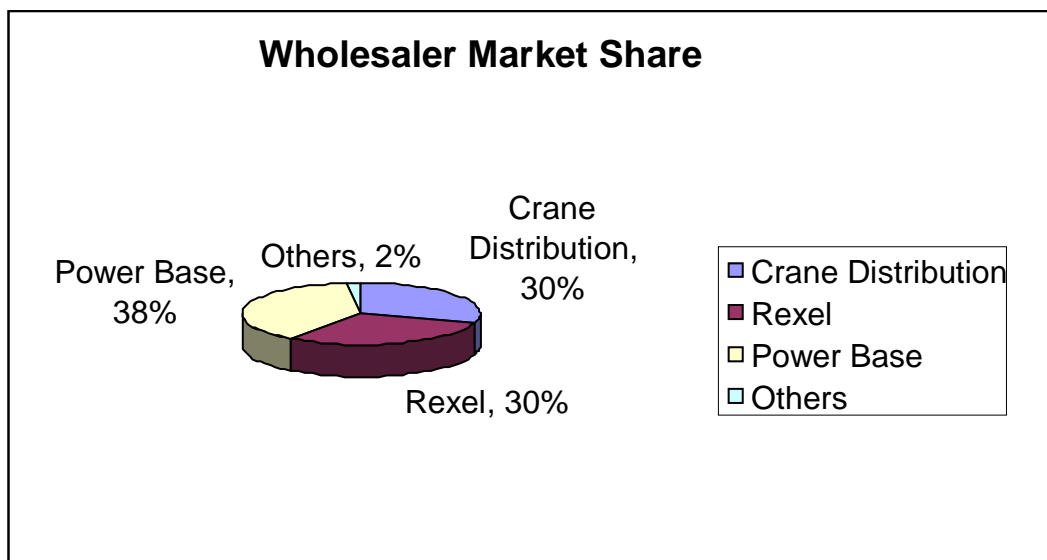
## **INDUSTRY BACKGROUND**

### *Structure*

39. The Schneider acquisition of Clipsal involves electrical distribution products and associated accessories. This product group can be further broken down into six separate categories:

- Category 1: main switchboards (medium and low voltage);
- Category 2: distribution panel board components for commercial buildings;
- Category 3: cable ladders and trays for carrying electrical wiring;
- Category 4: low voltage panel board components for residential buildings;
- Category 5: wiring devices and cabling systems including switches and sockets, control, communications and emergency systems, boxes, fixing and cabling material; and
- Category 6: other products including motor control gear and industrial switchgear.

40. Most suppliers produce products for several of these categories. Competing suppliers in categories 4 and 5 are able to alter production processes with a minimum of difficulty to produce products in the opposite category.
41. Suppliers of electrical distribution products supply to the major wholesaler groups in New Zealand. These electrical distribution products and associated accessories are either manufactured in New Zealand or imported from overseas. Wholesalers offer a wide range of suppliers' products in the retail market to contractors.
42. There are three major wholesalers in New Zealand. Their market shares are shown below. Electrical contractors make up the bulk of the sales of the three wholesalers with a smaller portion of sales made to retail customers.



43. New Zealand, together with all other manufacturing countries (except the United States and, until recently, Japan), has adopted the standards published by the International Electrotechnical Commission ("IEC") for circuit breakers and industrial switchgear. The IEC is the leading global organisation that prepares and publishes international standards for all electrical, electronic and related technologies. Its standards are used internationally as a basis for national standardisation and as a reference when drafting international tenders and contracts.



44. There is therefore a ready source of internationally manufactured products, which comply with New Zealand's technical standards available for import.
45. Wholesalers are able to, and do, bypass local suppliers by importing electrical products directly from overseas manufacturers. Conversely, suppliers, such as Schneider, are able to bypass wholesalers and supply directly to electrical contractors (and to large users, such as panel builders, original equipment manufacturers and large end user sites).
46. See Appendix 1 for pictures of the products involved.

### ***Conduct***

47. Electrical distribution equipment suppliers compete on both price and quality dimensions. A large portion of the major suppliers' business is driven by large projects. A contractor will bid for a construction project with an estimated cost for the electrical distribution products. This cost is typically 5-10% of the total project cost. Contractors will often seek to obtain the entire complement of electrical distribution products from one of the major wholesalers.
48. Bids are often returned by the project owner to the contractor with a request for a lower price. The contractor responds by going to wholesalers and seeking further reductions in an effort to increase the competitiveness of the overall construction project bid.
49. ECANZ and contractors interviewed indicated that the majority of large contractors in New Zealand operate under fixed price contracts. The presence of a large number of fixed price contracts in the industry means contractors are likely to be sensitive to any price increases by wholesalers and/or suppliers. This condition makes contractors prone to switch from product brands that are not competitively priced to a lower cost provider.
50. Contractors purchase products based on either a historical preference for a certain brand or based on the specifications required by the architect/project manager of a project.
51. Suppliers provide wholesalers with rebates based on historical sales/volume. Suppliers target significant marketing resources towards contractors and other end users. Rebates, promotions (e.g. t-shirt, hat giveaways) and brochures are used to build brand awareness and generate customer loyalty.
52. Suppliers, wholesalers and contractors indicate that price is the main driver in the industry. Products in categories 4 and 5 are highly commoditised with a standard level of quality expected by end users. Industry participants emphasised the importance of brand loyalty among contractors. Schneider's PDL brand commands the highest degree of brand loyalty as it is considered a New Zealand brand and has been in the market for roughly 60 years. Similar loyalty to Clipsal and HPM brands is also a factor among contractors when choosing products.
53. Contractors indicated, however, that brand loyalty is dependent on the products remaining price competitive.
54. Given the importance of brand loyalty it is important for new entrants to establish a brand presence in order to acquire market share. The presence of several smaller competitors suggests it is possible to achieve a foothold in the market and with sufficient marketing a new brand can gain market share.

## MARKET DEFINITION

55. The Act defines a **market** as:

*... a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.*

56. For the purpose of competition analysis, a relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry, could impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the ‘*ssnip* test’). For the purpose of determining relevant markets, the Commission will generally consider a *ssnip* to involve a five percent increase in price for a period of one year.

57. The Commission defines relevant markets in terms of four characteristics or dimensions:

- the goods or services supplied and purchased (the product dimension);
- the level in the production or distribution chain (the functional level);
- the geographic area from which the goods or services are obtained, or within which the goods or services are supplied (the geographic extent); and
- the temporal dimension of the market, if relevant (the timeframe).

### *Product Market*

58. The Applicant submitted a market definition that includes all six of the product categories cited in the Industry Background section. The Applicant’s market definition was for the supply of “electrical distribution products and associated accessories in New Zealand.” The Applicant contends that this broad market definition is appropriate given the strong supply side substitutability in the market. The Applicant states “suppliers of electrical distribution products and associated accessories can, given a small change in relative prices, substitute between producing different products in the range {categories 1-6}”.

59. Given that aggregation occurs only in the supply of products listed in categories 4 & 5, the Commission’s market definition and competition analysis will focus only on those products. Given the small amount of market share held by Clipsal in category 6, the Commission does not consider the level of aggregation merits further examination in the competition analysis.

**Table 1: Areas of Aggregation**

Product Categories Where Aggregation Occurs						
	Category 1	Category 2	Category 3	Category 4	Category 5	Category 6
Schneider	[]	[]	[]	[]	[]	[]
Clipsal	[]	[]	[]	[]	[]	[]

### **Supply Side Substitution**

60. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change in their relative prices.
61. Technically, there is little to prevent established electrical equipment suppliers from manufacturing equipment within any of the six categories listed above. Products in categories 4, 5 and 6 do not require heavy manufacturing to produce. Most of the products in categories 4 and 5 are plastic with minimal amounts of circuitry.
62. The supply side substitutability suggested by the Applicant was confirmed by other suppliers in the industry and wholesalers of electrical distribution products.

### **Demand Side Substitution**

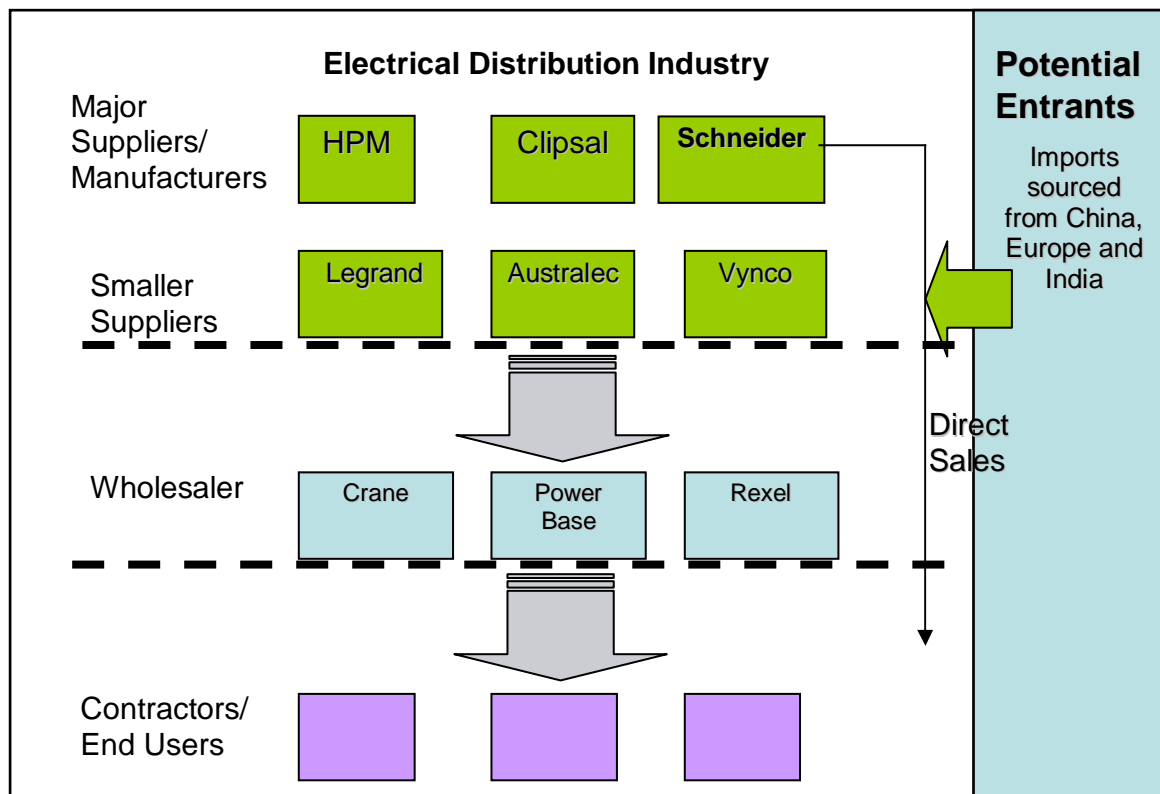
63. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.
64. Many of the products listed in categories 1-6 are not substitutable from a demand-side perspective, as their form and function are specific for the purpose to which they are put.
65. Electrical contractors indicated that products in categories 4 and 5 lack demand side substitutability. For example, an electrician cannot substitute a moulded circuit breaker case with a 230v socket.
66. The major wholesalers indicate that discounts on products in categories 4 and 5 are used to entice contractors into the doors of a particular wholesaler. In interviews, wholesalers indicated they consider products in categories 4 and 5 as separate product types. The wholesaler's separation of these types of products into separate categories, combined with the lack of demand side substitutability, suggests a narrow approach to defining the relevant markets is appropriate.
67. The Commission considers that defining categories 4 and 5 as separate product markets is appropriate to assess the impact of the merger on the level of competition post acquisition. This is on the basis that if no market power is found in the narrower market, it is unlikely market power exists in the wider market and is supported by the Commission's market definition in Decision 463 *Reyrolle Pacific Holdings Limited & VA Tech Reyrolle Pacific Limited*. The appropriate product markets are the supply of low voltage panel boards for residential buildings and the supply of wiring devices and cabling systems.

### *Functional Market*

68. The diagram below<sup>2</sup> provides an outline of the functional levels involved in the manufacture and distribution of electrical distribution products.

---

<sup>2</sup> Provided by the Applicant and amended by the Commission,



69. Schneider does sell directly to some contractors in New Zealand. Of Schneider's total sales [ ] go directly to contractors, [ ] directly to retail and [ ] to wholesalers. The majority of product sold directly is medium voltage electrical products (category 6). The acquisition will not result in any vertical aggregation.
70. Wholesalers indicate that panel board and wiring device and cabling products (categories 4 and 5) are the product categories where contractors apply the most pressure for price reductions due to these categories representing high volume purchases for contractors.
71. J.A. Russell stated that firms like Mitre 10 and Placemakers typically use these categories as loss leaders, though wholesalers consider categories 4 and 5 not as loss leaders but as the products where the most amount of negotiation over price occurs.
72. The difference in the two approaches reflects the different target customer (contractor versus consumer) and the buying power of Mitre 10 and Placemakers. These retail groups have the buying power to buy directly from suppliers in both New Zealand and overseas and extract sufficient price reductions as a result.
73. This downward pressure on price from the contractors is relayed to wholesalers and eventually back up to suppliers. [ ] indicated that while products in categories 4 and 5 receive the most margin pressure they are not sold at a loss. Products in these categories possess some of the strongest brand affiliation although they typically represent [ ] of the total revenue of wholesalers.
74. The Commission noted in Decision No.433, *Howard Smith/OPSM Protector* that where a company supplies goods to several markets, the Commission will examine the functional levels relevant to the supply of the various goods in question.

75. The Commission considers the appropriate functional level is the supply of electrical distribution products to wholesalers. While a significant portion of Schneider's sales is through direct selling to contractors, the areas where aggregation occurs, low voltage panel boards and wiring device/cabling systems, are the products sold to wholesalers. The competition impact of the acquisition on the two product markets identified where aggregation occurs is most accurately assessed using the functional level of supply to wholesalers.

### *Geographic Market*

76. The applicant submitted arguments that the relevant geographical dimension is the whole of New Zealand. The three major wholesaling groups in New Zealand supplied by Schneider and Clipsal have national distribution networks and Schneider supplies direct to users on a national basis.

77. Therefore, the Commission considers the appropriate geographic area to be national.

### *Conclusion on the Relevant Markets*

78. The Commission concludes that, for the purpose of analysing this application, the relevant market is as follows:

- The national market for the wholesale supply of low voltage panel boards for residential buildings ("the panel board market"); and
- The national market for the wholesale supply of wiring devices and cabling systems ("the wiring device and cabling system market").

### *Factual*

79. The Commission uses a forward-looking, counterfactual, type of analysis in its assessment of business acquisitions, in which two future scenarios are postulated: that with the acquisition in question (the factual), and that in the absence of the acquisition (the counterfactual). The impact of the acquisition on competition can then be viewed as the difference between those two scenarios. It should be noted that the status quo cannot necessarily be assumed to continue in the absence of the acquisition, although that may often be the case. For example, in some instances a clearly developing trend may be evident in the market, in which case the appropriate counterfactual may be based on an extrapolation of that trend.

80. In the factual scenario the merged entity and HPM will operate in the markets defined by the Commission. Several smaller players including Australec, Vynco, Hager and Legrand will also operate in the markets identified.

81. Schneider advised the Commission that the rationale for the acquisition is [

]

### *Counterfactual*

82. The Applicant has not provided a counterfactual in its clearance application. As there is no evidence to indicate both Schneider and Clipsal cannot continue to operate in New Zealand, the Commission considers the appropriate counterfactual the status quo.

### **COMPETITION ANALYSIS**

83. Having defined the counterfactual, the Commission will assess the following for each of the relevant markets:

- the probable nature and extent of competition that would exist in a significant section of the market, but for the acquisition (the counterfactual);
- the nature and extent of the contemplated lessening by considering market concentration, existing competition and potential competition and other competition factors such as countervailing power; and
- whether the contemplated lessening is substantial.<sup>3</sup>

84. The first step in assessing competition is to look at market shares. Market shares can be measured in terms of revenues, volumes of goods sold, production capacities or inputs (such as labour or capital) used. All measures may yield similar results in some cases. Where they do not, the Commission may, for the purposes of its assessment, adopt the measure which yields the highest level of market share for the combined entity. The Commission considers that this will lead to an appropriately conservative assessment of concentration, and that the factors which lead to the other different market share results are more appropriately considered elsewhere during the assessment of the acquisition.<sup>4</sup>

85. In determining market shares, the Commission will take into account the existing participants (including 'near entrants'), inter-firm relationships, and the level of imports. This is followed by an application of the Commission's 'safe harbours'.

86. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:

- where the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of a 40% share; or
- where the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.

---

<sup>3</sup> See *Dandy*, supra n 5, pp 43–887 to 43-888 and adopted in New Zealand: *ARA v Mutual Rental Cars* (1987) 2 NZLR 647; *Tru Tone Ltd v Festival Records Retail Marketing Ltd* (1988) 2 NZLR 352; *Fisher & Paykel Ltd v Commerce Commission* (1990) 2 NZLR 731; *Commerce Commission v Carter Holt Harvey*, unreported, High Court, Auckland, CL 27/95, 18/4/00.

<sup>4</sup> See the Commission's Practice Note 4 for further explanation of the Commission's approach to market share.

87. However, market shares are insufficient in themselves to establish whether competition in a market has been lessened. Additional factors must also be considered before a conclusion is reached. These factors are:
- existing competition;
  - potential competition; and
  - other competition factors such as countervailing power.
88. These factors, along with market concentration, are considered in subsequent sections for each of the relevant markets.
89. After considering the additional factors outlined above, the Commission will assess whether the merger is likely to result in a substantial lessening of competition (“SLC”).
90. Section 2(1A) of the Act provides that substantial means real or of substance. Substantial was considered by McGechan J in *Commerce Commission v Port Nelson Ltd* (1995) 6 TCLR 406, 434. He observed:
- “substantially lessening competition ” is taken as meaning “lessening competition in a way which is more than insubstantial or nominal”. The merely ephemeral and minimal will not suffice. Inevitably, that will involve some attention to relativity; and in the end be a question of judgment on a matter of degree.”
91. The Commission considers that it is necessary to identify a real lessening of competition that is not nominal, rather a quantifiable measure of lessening. The lessening needs to be of such a size, character and importance that it is worthy of consideration.<sup>5</sup> Overall, the Commission considers that substantially lessening competition concerns a real or substantial impact on a market in a way of a lessening, hindering and preventing the process of workable and effective competition.

**THE NEW ZEALAND MARKETS FOR THE SUPPLY OF LOW VOLTAGE PANEL BOARDS FOR RESIDENTIAL BUILDINGS (“THE PANEL BOARD MARKET”) AND THE SUPPLY OF WIRING DEVICES AND CABLING SYSTEMS (“THE WIRING DEVICE AND CABLING SYSTEM MARKET”)**

***Market Concentration***

92. The Commission has defined markets for the supply of low voltage panel boards for residential buildings; and for the supply of wiring devices and cabling systems. The Commission is not assessing products falling outside of these markets as the acquisition does not result in any aggregation outside of the above product categories. As the competitive dynamic of both markets is similar, the Commission intends to combine the competition analysis of these two markets in order to assess the likelihood of a lessening of competition. Any differences between the two markets that affect the competition analysis will be discussed.
93. The Commission considers the appropriate measure to determine market share is the dollar value of sales made of the products represented in the above markets. The table below reflects the estimated market shares of the merged entity and other competitors in

---

<sup>5</sup> *Dandy Power Equipment Pty Ltd v Mercury Marina Pty Ltd* (1982) ATPR 40-315, 43-888.

the panel board market based on figures provided by the Applicant and information gleaned in the course of the Commission's investigation.

Table 2: The Panel Board Market

<b>Firm</b>	<b>Market Share</b>	<b>Value in \$</b>
Schneider	[ ]	[ ]
Clipsal	[ ]	[ ]
Merged Entity	[ ]	[ ]
Hager	[ ]	[ ]
Vynco	[ ]	[ ]
HPM	[ ]	[ ]
Other	[ ]	[ ]
<b>Total</b>	<b>100%</b>	[ ]

94. The current three firm concentration ratio is [ ]. Post acquisition the three firm concentration ratio is [ ]. The market shares in the panel board market fall within the Commission's safe harbours guidelines.

Table 3: The Wiring Device and Cabling System Market

<b>Firm</b>	<b>Market Share</b>	<b>Value in \$</b>
Schneider	[ ]	[ ]
Clipsal	[ ]	[ ]
Merged Entity	[ ]	[ ]
Hager	[ ]	[ ]
HPM	[ ]	[ ]
Other	[ ]	[ ]
<b>Total</b>	<b>100%</b>	[ ]

95. The current three firm concentration ratio is [ ]. Post acquisition the three firm concentration ratio is [ ]. The market shares in the wiring device and cabling system market fall within the Commission's safe harbours guidelines.

96. The large market share represented by the "other" column in the wiring device and cabling system market reflects the number of small competitors operating in that market. Operations with one to two personnel importing wiring devices and cabling systems are found throughout New Zealand.



97. Market shares are insufficient in themselves to establish whether competition in a market has been lessened. It is the interplay between a number of competition factors, of which seller concentration is only one that has to be assessed in determining the impact of a business acquisition on competition. Other competition factors include entry conditions; the presence of an aggressive, innovative or maverick firm; countervailing power of buyers or suppliers; rapid innovation in the market; and others. These are considered for the relevant market in subsequent sections.

### ***Existing Competition***

98. Post acquisition, the Applicant will be the largest provider of products in the panel board market and the wiring device and cabling system market. Despite this, the merged entity will continue to face strong competition from existing competitors in both markets such as HPM and Vynco.
99. A wide range of market participants categorised both markets as extremely competitive with competitors like HPM and Vynco willing to take advantage of any attempt by the merged entity to raise prices. HPM General Manager Marcel van Dijck commented that the electrical distribution product industry in the long term is moving towards a “lowest cost of goods” model due to the ability to import from overseas sources and increased focus by end users on reducing costs. [ ]
100. HPM also stated that any attempt by the merged entity to increase prices would be regarded as an opportunity for HPM to increase market share in both markets.
101. Smaller competitors like Legrand, Hager and Australtec also provide a source of competition with their ability to provide New Zealand wholesalers and end users with products within the panel board and wiring device and cabling system market in the event of a price increase by the merged entity.
102. Legrand is a new entrant providing products in both markets. Legrand is a multinational company with a global brand that is well known within the electrical distribution industry. Legrand has the ability to source products from its manufacturing sites in both Australia and Asia. Legrand is seeking to gain market share and considers any attempt by the merged entity to raise prices as an opportunity to gain further market share.
103. Several small suppliers currently import a range of specific products into New Zealand from India and China. Shweta Enterprise produces a product catalogue with several hundred products from both markets. They rely on offering competitive prices by importing from India. Although they target smaller end users, they maintain a constraint on the pricing behaviour of larger competitors in the market by acting as a viable source of supply.
104. As large electrical contractors in New Zealand operate under fixed priced contracts, any price rise by the merged entity is likely to lead to contractor switching. Competing suppliers interviewed consider any effort by the merged entity to raise prices as an opportunity to increase market share given the price sensitivity of contractors.
105. Major contractors interviewed, stated that while they are loyal to specific brands they would switch if products were not price competitive. Mark Borland, General Manager of Ward Chandler Contracting stated

*“typically you stay with the major brands...price is what drives our industry...I would be concerned {by the acquisition} if there wasn’t any other players but I guess it would open the doors for others to come on board. We would be willing to use HPM and it is just a matter of a new entrant doing the marketing”.*

### *Conclusion on Existing Competition*

106. The Commission considers that the significant level of existing competition does not substantially change post acquisition due to the presence of several large competitors and the presence of a number of smaller firms in the market able to offer competitively priced product in the event of a price increase by the merged entity. Additionally products in both markets can be quickly imported by existing competitors who can expand inventory to counter any effort by the merged entity to increase prices. These factors pose a significant constraint on the actions of Schneider/Clipsal post acquisition.

### ***Potential Competition***

#### *Introduction*

107. While the Commission considers the level of existing competition is likely to constrain the merged entity, in order to assess fully the impact of the acquisition on the relevant markets, the Commission has gone on to consider potential competition.

108. A business acquisition is unlikely to result in a substantial lessening of competition in a market if behaviour in that market continues to be subject to real constraints from the threat of market entry or expansion

109. The threat of entry or expansion can act as a significant constraint on the merged entity. As noted in Practice Note 4:

*“The essential test for whether or not there is a significant barrier to entry can be expressed simply enough: it is whether the threat of entry of whatever kind will constrain incumbents to behave competitively. It follows that neither initial entry nor eventual established supply must necessarily be of the full-line variety. Leading firms can be constrained by a collection of more specialised rivals.”*

110. The Commission will consider whether the threat of entry by new firms and/or expansion by the smaller existing competitors in both markets could act as a sufficient constraint on the merged entity in the analysis below.

111. The Commission will consider the history of past market entry as an indicator of the likelihood of future entry. The Commission is also mindful that entry often occurs on a relatively small scale, at least initially, and as such may not pose much of a competitive constraint on incumbents within the relevant time frame.

#### *Barriers to Entry/ Expansion*

112. The likely effectiveness of the threat of new entry in constraining the conduct of market participants, following a business acquisition that might otherwise lead to a substantial

lessening of competition in a market, is determined by the nature and height of barriers to entry or expansion into that market.

113. The Commission considers that, for the purpose of considering this issue, a barrier to entry is best defined as an additional or significantly increased cost or other disadvantage that a new entrant must bear as a condition of entry. In evaluating the barriers to entry into a market, the Commission will generally consider the broader 'entry conditions' that apply, and then go on to evaluate which of those constitute entry barriers.
114. It is the overall obstacle to entry posed by the aggregation of the various barriers that is relevant in determining whether entry is relatively easy or not, and therefore whether or not potential entry would prevent a substantial lessening of competition.
115. For entry to act as an antidote to a substantial lessening of competition stemming from a business acquisition, it must constrain the behaviour of the combined entity and others in the market.

#### New Entry

116. An entrant can enter the panel board market and wiring device and cabling system market via two methods, the first is to manufacture its own products in another country and import the product or manufacture in New Zealand. The second method is for a supplier to secure product from a foreign supply source and import those products into New Zealand.
117. The key criteria for a potential entrant seeking to supply both markets are a degree of technical expertise, a source of reliable product that meets IEC standards, industry contacts, a reference site, and possibly a small assembly facility.
118. The size and geographical coverage of the three large wholesalers in New Zealand, Rexel, Crane and Power Base, provide new entrants with a means of distributing products throughout New Zealand. A new entrant does not have to incur sunk costs in a distribution network to supply end users. A new entrant will have to incur marketing costs in order to build brand awareness among end users and architects. [
- ]
119. In interviews with suppliers, wholesalers and contractors, the major impediment to a new entrant is overcoming the relative conservatism of contractors who are, for historical reasons, affiliated with one of the existing main brands in New Zealand, PDL, Clipsal and HPM.
120. To overcome the brand affiliation of end users a new entrant will have to invest in marketing initiatives. [

]. While there is a cost associated with establishing a brand, the recent entry of other competitors suggests these firms consider it possible to overcome the brand awareness both Schneider and Clipsal possess.

121. A further point to consider is that wholesalers and end users indicated that users of products from both markets are highly price sensitive. While brand identity is important, end users stated they would switch products in response to a price increase of 5% to 10%. The Commission considers that barriers to entry are low in both the panel board and the wiring device and cabling system market.

*Likelihood of Entry*

122. The entry of Legrand in 2002 is a useful example to use to assess the likelihood of new entry in response to a snip. Legrand, with a global presence in the electrical distribution industry and with a presence in Australia, entered the New Zealand market with a small operation. The operation includes one general manager and 2-3 sales managers responsible for liaising with both end users and wholesalers. The three managers are supported by a small support staff. Legrand maintains an inventory of products in New Zealand and can source any products not available in its New Zealand inventory within [ ] from its warehouse operations in Asia or Australia.

123. [

] The General Manager of Legrand, Laurent Mangeant, stated that the major obstacle for a new entrant is getting end users to switch from an established brand to a new one. Mr. Mangeant cited historical reasons as the main rationale for contractors staying with one brand. PDL, in particular, and Clipsal and HPM are perceived as New Zealand brands. While this may not be entirely correct given the fact that the major suppliers do source a percentage of their product from overseas production facilities, end users are often hesitant to switch.

124. It appears it is not superior quality or product characteristics that make end users hesitant to switch—it is primarily the historical affiliation end users have with a particular brand. Mr. Mangeant indicated that countering this brand affiliation requires a targeted marketing effort at contractors and project designers to develop awareness of new products. The marketing effort typically includes product giveaways, rebates, brochures and face to face contact with electrical contractors. Legrand's entry into the market suggests the company considers it possible to achieve a presence in the market.

125. The Commission considers that based on evidence of recent entry by several small competitors into both the panel board market and the wiring device and cabling system market entry is possible in response to a 5% increase in price by the merged entity. Given the number of existing competitors in both markets, the Commission considers it more likely that expansion by these competitors would act as the major constraint on the merged entity. The ability of existing competitors to expand is discussed below.

*Extent of Entry*

126. Given the strength of the three New Zealand wholesalers, new entrants can rely on the distribution network provided by wholesalers to supply end users throughout New Zealand. A new entrant requires the ability to source a product range that is price and quality competitive with existing products. A new entrant can set up a small office operation in a major urban centre, much like Legrand, and maintain a small warehouse that provides wholesalers with inventory.

127. The sales and marketing function can be performed by a small sales staff that travels throughout New Zealand building brand awareness and “customer pull” that will pressure wholesalers to stock the entrant's product.

128. Given the ease with which low voltage panel board and wiring devices and cabling systems can be imported, a small operation can contest for both large projects and the smaller maintenance and DIY projects. The presence of firms like Legrand and Australac

illustrates the ability of new entrants to enter the market and provide a realistic alternative to larger firms like Schneider and HPM.

129. Industry participants have indicated it is unlikely a new entrant will carry the full product range that Schneider currently supplies into the market. Contractors and wholesalers noted that the ability of a new supplier to provide a significant portion of the products from both markets provides an alternative to the PDL/ Clipsal brands.
130. The ability of existing competitors in the electrical distribution product industry to expand represents the major constraint on the merged entity post acquisition. CH New Zealand, while not currently offering products in the wiring device and cabling system market stated it was willing to consider entry in the event of a price increase by the merged entity. Firms selling products outside of the panel board and wiring device and cabling system markets have the ability to quickly expand their product offerings by sourcing competing product from overseas manufacturers.
131. The number of small players in the market as represented by the “Other” category in the market share tables suggests there is a large number of competitors who could quickly expand their inventory to provide even large end users with products from both the panel board and wiring device and cabling system markets.
132. The Commission considers that a new entrant could establish a supply operation that would act to constrain the merged entity post acquisition in both the panel board market and the wiring device and cabling system market. The Commission considers it is more likely that existing competitors like Legrand and Vynco would expand their operations in response to a price increase by the merged entity. The Commission considers the ability of these competitors to expand would act as a sufficient constraint on the merged entity post acquisition.

#### *Timeliness of Entry*

133. The Commission considers that based on evidence of previous new entry an entrant can establish a supply operation capable of providing the industry with low voltage panel board components and wiring devices and cabling systems within 12 months.

#### *Conclusion on Constraint from Potential Competition*

134. The Commission concludes that there are not sufficient barriers to entry or expansion to deter new entry or expansion. Potential competition is likely to provide a sufficient constraint on the merged entity, and the industry as a whole.

### **OTHER COMPETITION FACTORS**

#### *Constraint from Buyers or Suppliers*

135. The potential for a firm to wield market power may be constrained by countervailing power in the hands of its customers, or alternatively, when considering buyer (oligopsony or monopsony) market power, its suppliers. In some circumstances, it is possible that this constraint may be sufficient to eliminate concerns that a business acquisition may lead to a substantial lessening of competition.

136. Where a combined entity would face a purchaser or supplier with a substantial degree of market power in a market affected by the acquisition, the Commission therefore considers whether that situation is such as to constrain market participants to such an extent that competition is not substantially lessened.

#### ECANZ

137. ECANZ, the industry body representing the interests of suppliers, wholesalers and end users, described the current level of competition in the market as “very competitive”. ECANZ stated it would respond to any attempt by the merged entity to raise prices by supporting new entry if necessary.

#### Wholesalers

138. The three major wholesalers in New Zealand were interviewed in an effort to assess the degree of countervailing power they can potentially bring to bear on the merged entity.

139. Combined, the wholesalers make up the majority of sales for low voltage panel board components. Wholesalers interviewed indicated they would be willing to seek, or threaten to seek alternative sources of supply were the merged entity to increase prices. The easiest option for wholesalers is to secure additional supply from HPM; wholesalers also indicated they were willing to seek alternative suppliers in New Zealand or abroad.

140. Phil Badger, the GM of the Power Base group, stated that the main power wholesalers can exercise is the threat of switching. Mr. Badger considers this threat alone is likely to be sufficient to constrain the merged entity and the other suppliers in the market.

141. In an interview with Crane, when asked what Crane could do if the merged entity attempted to lower wholesaler margins and/or increase end users prices, the General Manager, Carl Smith, stated:

“[

]

*That would take a pretty significant investment and a fairly long period of time too. You could have a limited range in 3 to 6 months you could have 35-50 items ready to import.*

[

]

142. When asked whether a new supplier can gain market share if the merged entity raised prices Rexel stated:

*“in concept absolutely true, in reality there are some third parties who have already tried, [ ], they have secured a very minuscule part of the market. Part of the reason it hasn’t been widely accepted is it hasn’t been heavily promoted. There are some quality issues. There is product you can get out of the Asian countries that is perfectly fine. If someone was to bring in the right products then fine. We have never imported wiring and accessories but we have brought in other products from China which was perfectly okay”.*

143. The wholesalers interviewed believe they possess the ability to source alternative product to counter efforts by the merged entity to raise prices within both markets. The biggest difficulty cited by wholesalers is the brand issue and the product range that the merged entity will be able to offer.
144. Competition between wholesalers is another important factor in assessing the level of constraint the wholesalers would exert on the merged entity. The effort to consistently offer contractors and end users the best possible price forces wholesalers to seek the best price from suppliers. Contractors shop aggressively between the three major wholesalers seeking the best price for projects. A wholesaler intent on offering competitively priced and quality product is likely to counter any effort by the merged entity to increase the price of PDL or Clipsal branded products by seeking alternative sources of supply.

#### *Conclusion on Constraint from Buyers or Suppliers*

145. The presence of several existing suppliers in New Zealand capable of providing product and the ability of wholesalers to purchase directly from overseas manufacturers would act as a significant constraint through countervailing power on the merged entity in the market for the supply of low voltage panel boards and the wiring device and cabling system markets

#### *Conclusion on SLC in the Panel Board Market and the Wiring Device and Cabling System Market*

146. In the panel board and the wiring device and cabling system markets, the proposed acquisition is unlikely to lead to a substantial lessening of competition. There is sufficient existing competition from HPM and the smaller competitors in the two markets to prevent the combined entity from exercising unilateral market power. The ease of potential entry as demonstrated by recent entry and the ability of existing competitors to expand will constrain the merged entity. In addition, the ability of wholesalers to exercise countervailing power will further constrain the merged entity post acquisition.

### **Overall Conclusion**

147. The Commission has considered the probable nature and extent of competition that would exist in the national market for:
- The wholesale supply of low voltage panel boards for residential buildings (“the panel board market”); and

- The wholesale supply of wiring devices and cabling systems (“the wiring device and cabling system market”).
148. The Commission considers that the appropriate counterfactual for comparison is the status quo.
149. The Commission has considered the nature and extent of the contemplated lessening in the supply of low voltage panel boards for residential building and the supply of wiring devices and cabling systems in New Zealand. The proposed acquisition would result in the merged entity obtaining a market share which falls within the Commission’s safe harbour guidelines.
150. The Commission has also considered the nature and extent of the contemplated lessening, in terms of the competitive constraints that would exist following the merger from:
- Constraint posed by existing competition;
  - Ease of entry and expansion by potential and existing competitors; and
  - Countervailing power by wholesalers.
151. The Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the
- The national market for the wholesale supply of low voltage panel boards for residential buildings (“the panel board market”); and
  - The national market for the wholesale supply of wiring devices and cabling systems (“the wiring device and cabling system market”).



**DETERMINATION ON NOTICE OF CLEARANCE**

152. Accordingly, pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition of the Gerard Industries Group wholly owned subsidiary Clipsal by Schneider Electric SA.

Dated this 7th day of October 2003

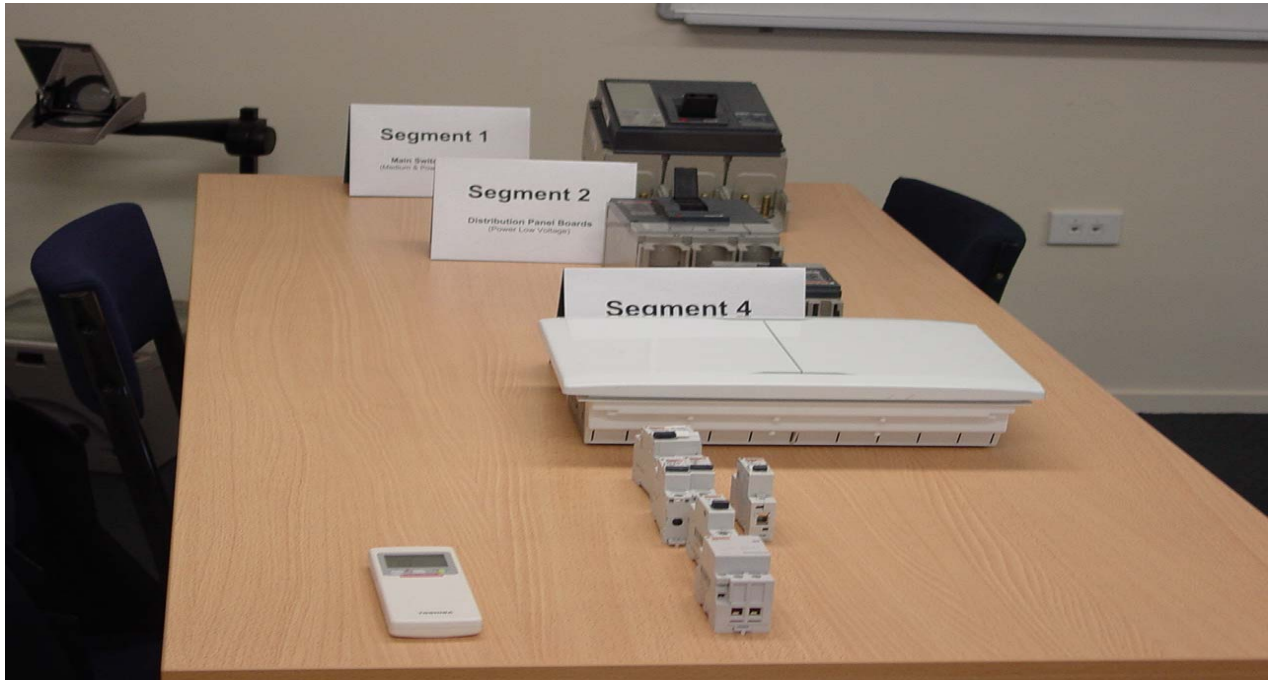
---

Paula Rebstock

Acting Chair

## APPENDIX 1

### Schneider Products



### Clipsal Products



### Competing Products



Schneider Products



Clipsal Products



### Competing Products

