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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

VINCI S.A.
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France

Subject: **Case M.10314 – VINCI S.A. / ENERGÍA Y SERVICIOS DINSA II**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 20 September 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Vinci S.A. (France), the ultimate parent company of the Vinci group ('Vinci' or 'Notifying Party'), will acquire sole control within the meaning of Article 3(1)(b) of the Merger Regulation over Energía y Servicios DINSA II, S.L.U. ('ACS ES' or the 'Target', Spain), by way of purchase of shares (the 'Transaction') from ACS

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

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Servicios Comunicaciones y Energía, S.A[3]. (Vinci and ACS ES are designated hereinafter as the 'Parties' to the Transaction.)

1. THE PARTIES

(2) Vinci is a diversified group active in concessions and infrastructures (e.g. motorways and airports); building, public works and civil engineering; energy and information technology services; and road works. In relation to energy, Vinci offers services in the fields of electrical engineering (electrical and telecommunications networks, power supply and others), air-conditioning/thermal engineering services (heating, cooling, air treatment and others) and mechanical engineering (automation, instrumentation and control systems).

(3) ACS ES has two business lines: industry support services (mainly aimed at industrial maintenance contracts and services) and integrated projects (focusing on the development of engineering, procurement and construction projects related to energy, including the development of projects related to renewable energies and the oil and gas sector).

2. THE CONCENTRATION

(4) The Transaction consists of the acquisition by Vinci of 100% of the shares of ACS ES. Upon completion of the transaction, Vinci will exercise sole control over ACS ES.[4]

3. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Vinci: EUR 44 707 million; ACS ES: EUR […], million)[5]. Each of them has a Union-wide turnover in excess of EUR 250 million (Vinci: EUR […] million; ACS ES: EUR […] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. MARKET DEFINITION

(6) The Parties' activities overlap horizontally in the provision of (i) electrical engineering services, (ii) mechanical engineering services, (iii) thermal and air-

3 Publication in the Official Journal of the European Union No C 398, 1.10.2021, p. 23.

4 Grupo ACS and VINCI S.A. have also agreed to the creation – conditional upon the closing of the Transaction – of a joint-venture owned […]% by Vinci and […]% by Grupo ACS under the sole control of the former. The purpose of the JV is, for a minimum term of eight years and six months, the acquisition from ACS ES, operation, asset management and optimisation of renewable energy production assets developed and connected to the grid by ACS ES.

5 Turnover calculated in accordance with Article 5 of the Merger Regulation.

conditioning engineering services, (iv) IT services, (v) construction services and (vi) Engineering, Procurement and Construction (EPC) of onshore Oil & Gas projects.[6]

(7) Considering all plausible product and geographic market definitions, the Transaction could only give rise to horizontally affected markets in the fields of electrical and mechanical engineering services.

4.1. Relevant markets

4.1.1. Electrical engineering services

4.1.1.1. Product market definition

(8) Electrical engineering services include services on electrical and telecommunication networks, substations, voice data-image, power supply, public lighting, etc. In its previous decisions, the Commission has distinguished between the provision of (i) electrical, (ii) mechanical and (iii) thermal/air-conditioning engineering services, although it left the precise market definition open.[7]

(9) Within electrical engineering services, the Commission has considered the possibility of further sub-segmenting the market depending on (i) the type of business (residential/non-residential); (ii) the type of work (installation/maintenance); and (iii) the nature of the service (infrastructures/industry/tertiary sector).[8]

(10) Moreover, the Commission has considered that engineering services on (i) telecommunication networks, (ii) substations, and (iii) power lines might constitute distinct markets.[9] Finally, the Commission has also considered in past decisions potential distinct markets for engineering services on public lighting, including street and public place lighting, traffic signals, and the illumination of places, monuments and buildings, distinguishing between installation and maintenance services.[10]

(11) The Parties generally agree with the Commission's practice, without taking a firm view on the exact product market definition.[11] Within the provision of engineering services for power lines, however, the Parties indicate that a possible further sub-

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6 Vinci also provides electrical and mechanical engineering installation or maintenance, as well as construction services, that hypothetically could be sourced by the Target for its EPC services for wind farms, photovoltaic farms and offshore oil and gas facilities. Vinci provides services which are not EPC specific, and the Target is only active in Spain and, to a lesser extent, in Denmark and Germany. Even if this hypothetical link could be considered as a vertical relationship, the Transaction would not give rise to affected markets. ACS ES' shares in the downstream markets do not exceed 10% in any geographic market, Vinci does not offer EPC specific services, and its market shares regarding electrical or mechanical services are far below 30%.

7 Case COMP/M.5701 – VINCI/CEGELEC, Case COMP/M.6623 – VINCI/EVT.

8 Case COMP/M.9270 – VINCI AIRPORTS / GATWICK AIRPORT, §21; Case COMP/M.6623 – VINCI / EVT, §7 *et seq*.; Case COMP/M.5701 – VINCI / CEGELEC §9 et seq.; Case COMP/M.6623 – VINCI / EVT §8 and Case COMP/M.2447 – FABRICOM / GTI §20.

9 Case COMP/M.6623 – VINCI / EVT §10 and Case COMP/M.5701 VINCI / CEGELEC §22-24.

10 Case COMP/M.7137 – EDF / DALKIA EN FRANCE, §132; Case COMP/M.5464 - Véolia Eau/Société des eaux de Marseille/Société des eaux d'Arles/Société Stéphanoise des eaux, §37.

11 Form CO paragraph 144.

distinction could be made between overhead and underground power lines.[12] The Commission's decisional practice has not considered such a distinction.

(12) The market investigation showed that competitors were divided as to whether the provision of electrical services to infrastructures[13] should be further segmented (e.g. distinguishing, for instance, between installation/maintenance of public lighting infrastructure, installation/maintenance of power lines, etc.),[14] although the majority of customers that expressed a view considered that no further segmentation would be necessary.

(13) However, when it comes to the provision of engineering services for power lines, the majority of competitors and customers were of the view that it was appropriate to distinguish by type of voltage (between high – above 50 000 volts, and medium/low – below 50 000 volts).[15] One competitor, for instance, indicated as follows: "*High voltage request specific plant, heavy equipment, staff & labor force being highly trained, not necessary for low or medium voltage. Profile of workers, equipment, software, plant are completely different*".[16] Other customers expressed similar opinions, and one of them stated that whereas there are some companies specialised in the provision of services for high-voltage lines, others cover the whole range of services.[17][18]

(14) As to a possible distinction between services concerning, on one hand, the installation and, on the other hand, the maintenance of power lines, all competitors that expressed a view indicated that they carry out both installation and maintenance

12 Form CO, paragraphs 254.

13 The only area that could potentially give rise to affected markets.

14 Competitors Q4, customers Q4.

15 Competitors Q5, customers Q5.

16 Competitors, Q.5.

17 Customers, Q.5.

18 As to a possible distinction between underground and overhead within each high and medium-low voltage lines, the Notifying Party submits that in France calls for tenders for high voltage overhead and underground electrical lines are issued separately by the two customers in the market (RTE and EDF SEI) and market shares are provided separately at national level (the Notifying Party is not able to estimate the Parties' market shares separately for each overhead and underground at a regional level, but it indicates that to its knowledge, all competitors active in France are able to answer calls for tenders regarding both overhead and underground works in all regions of France where the Parties' activities overlap). In France, the Parties' activities do not overlap in medium-low voltage lines and, therefore, a possible distinction between underground and overhead lines is not relevant. As regards Spain, the Notifying Party submits that the calls for tenders do not distinguish between overhead and underground works and are therefore jointly tendered, and thus, such distinction is not relevant. In high voltage lines, the Notifying Party submits that such distinction would in any case have no relevant impact as the proportion of the market relating to underground high voltage line works is negligible. In medium-low lines, the Notifying Party submits that in any case such a distinction is also not relevant for the competitive assessment as the teams delivering services related to medium and low voltage electrical lines services perform services on both overhead and underground lines during the same day, notably because the line cables are thin (much thinner and easier to handle than cables for high voltage lines) and installed on already existing poles for overhead lines and inside already existing ducts for underground lines (reply by the Notifying Party to RFI 9 of 22 October 2021). The customers and competitors consulted by the Commission in the market investigation pointed to relevance of the distinction between high and low-medium lines as there are differences in demand (different customers) and the structure of supply between these two types of lines. None of the market players pointed to the relevance of a distinction between overhead or underground lines, which are tendered by the same customers.

works.[19] A slight majority of customers indicated that they contract installation and maintenance services in the same contract[20] and that most contractors cover both types of works.[21] One customer explained that installation and maintenance are very similar, that they often involve the same type of works, only with a difference in their urgency, and that the staff and resources employed by companies can be used in both.[22]

(15) The Commission considers that, for the purposes of this Decision, it can be left open whether the provision of electrical engineering services should be sub-segmented according to the type of business, the type of work or the nature of the service; whether distinct product markets should be considered for telecommunication networks, substations, power lines or public lighting; or whether power lines should be further sub-segmented according to the type of voltage or between overhead and underground power lines, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any of the plausible product market definitions.

4.1.1.2. Geographic market definition

(16) In its previous decisions, the Commission has considered that the geographic scope of electrical engineering markets was at least national, although the precise definition was ultimately left open.[23] While it is true that in one case concerning France the Commission considered both national and regional shares due to the existence of national players,[24] the market investigation in that same case suggested that the geographic scope for the provision of services to power lines was most likely national because the competitive conditions were similar throughout France.[25]

(17) The Notifying Party considers the markets to be, at least, national in scope.[26]

(18) In the market investigation, the majority of competitors were of the view that companies active in electrical engineering services are typically present at national level and that prices are essentially the same throughout the national territory.[27] The majority also indicated that the market for the installation/maintenance of electrical infrastructures should be viewed as national, with one competitor even indicating that it could be even EEA-wide or wider.[28] The majority of customers also agreed that most companies active in electrical engineering services are present at national level.[29] One of the main customers in Spain also stated that "*most of our suppliers of*

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19 Competitors, Q.6. One competitor, however, stated that they need to sub-contract certain works in high voltage power lines.

20 Customers Q7.

21 Customers Q6.

22 Customers Q.7

23 COMP/M.2447 – Fabricom / GTI, paras. 17, 25, 27-28; Case COMP/M.3653 – Siemens /VA Tech, paras. 445-446.

24 COMP/M.5701 - VINCI / CEGELEC, para. 53.

25 COMP/M.5701 – VINCI / CEGELEC, para. 33, COMP/M.6623 - VINCI/ EVT BUSINESS, paras 14-15.

26 Form CO, paragraph 150.

27 Competitors, Q8 and Q10.

28 Competitors, Q11

29 Customers, Q9. Even the ones who considered that most service providers are regional explained that "*most […] suppliers are local companies. Nevertheless, national companies such as Vinci and Eiffage,*

electrical engineering services cover the national territory. Some big corporations may have companies that operate in different countries". The replies provided by customers were also inconclusive as to whether quoted prices differ significantly in different areas within Spain and/or France. One of the main customers in Spain explained that "*prices show very little variation from one region to another. These variations might be slightly higher in islands with respect to continental territory, due to the location and isolation*".[30] In any case, the majority of customers also consider that the market is national.[31]

(19) In conclusion, according to the market investigation the geographic scope of the provision of electrical engineering services, in particular for power lines, is most likely national although, for the purposes of this Decision, it can be left open whether the market should be defined as national or regional, as the Transaction does not raise serious doubts as to its compatibility with the internal market under either geographic market definition.

4.1.2. Mechanical engineering services

(20) In the mechanical engineering services field, the Commission has considered in its past decisions further sub-segmenting the market distinguishing by type of work (installation/maintenance), type of business (residential/non-residential), and the type of customer (infrastructures/industry/tertiary), although the precise market definition has ultimately been left open.[32] The Parties do not contest the Commission's past practice.

(21) As regards the geographic market definition, the Commission has in the past left open whether the market should be considered national or regional.[33] The Notifying Parties submit that the provision of mechanical engineering services is national.

(22) For the purposes of this Decision, it can be left open whether the provision of mechanical engineering services should be sub-segmented according to the type of work, the type of business or the type of customer and whether the market should be defined as national or regional, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any product or geographic market definition.

5. COMPETITIVE ASSESSMENT

(23) The Transaction would not give rise to any affected markets at national level according to the market definitions and the different segmentations considered by the Commission in the past.

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although a minority in number, may represent a significant part of the volume of purchases in certain territories".

30 Customers, Q11.

31 Customers, Q12.

32 COMP/M.9270 – VINCI AIRPORTS / GATWICK AIRPORT, §21; Case COMP/M.6623 – VINCI / EVT, §7 et. seq.; Case COMP/M.5701 – VINCI / CEGELEC §9 et seq.

33 Case COMP/M.5701 – VINCI / CEGELEC §§28 – 32.

(24) However, considering narrower segmentations, a number of affected markets would arise in the areas of electrical engineering services and mechanical engineering services.

5.1. Electrical engineering services

(25) In Spain, on a broader market for maintenance services for electrical infrastructures, there would not be an affected market at national level, but two regional markets would be affected: Andalucía and Extremadura.

(26) As regards services for power lines, if a distinction is made according to the voltage of the power lines (i.e. between high voltage power lines above 50 000 volts, and low and medium voltage power lines below 50 000 volts), there would be an affected national market (for maintenance services for medium and low voltage electric lines). And if the markets were to be defined regionally, there would be a number of affected regional markets:

(a) Installation and maintenance services - taken together – for low and medium voltage power lines (Andalucía, Aragón, Balearic Islands, Canary Islands, Catalonia and Extremadura); and

(b) If the services' markets are considered more narrowly (i.e. distinguishing between installation and maintenance):

– for installation services of high voltage power lines (Aragón, Asturias, Castilla La Mancha, Catalonia, Madrid and Valencia),

– for installation services of low and medium voltage power lines (Andalucía); and

– for maintenance services of low and medium voltage power lines (Andalucía, Aragón, Balearic Islands, Canary Islands, Catalonia and Extremadura).

(27) In France, as regards services for power lines, if a distinction is made between overhead and underground lines within high voltage lines (the only type of lines where the Parties' activities overlap), there would be affected national markets for the installation of (i) overhead and (ii) underground power lines. And if a distinction is made according to the voltage of the power lines and the markets were to be defined as regional, two regional markets would be affected for the installation of high voltage power lines: Centre-Val de Loire and Corsica.

5.1.1. Spain

(28) Table 1 below shows the Parties' market shares in Spain in 2019 and 2020 for all plausible affected markets.[34]

[34] In Spain, overhead and underground power lines are tendered jointly (see footnote 18).

Table 1 Market shares for the Parties in Spain, 2019-2020

Potential Market			2020 market shares			2019 combined shares
			Vinci	Target	Combined	
National						
Maintenance of low and medium voltage power lines			[20-30]%	[10-20]%	[30-40]%	[30-40]%
Regional						
Maintenance of electrical infrastructure		Andalucía*	[0-5]%	[10-20]%	[20-30]%	[20-30]%
		Extremadura	[10-20]%	[10-20]%	[20-30]%	[30-40]%
Segments by voltage of power lines	Installation **and** maintenance (low and medium voltage)	Andalucía	[10-20]%	[10-20]%	[30-40]%	[40-50]%
		Aragón	[30-40]%	[0-5]%	[30-40]%	[10-20]%
		Balearic Islands	[20-30]%	[0-5]%	[30-40]%	[10-20]%
		Canary Islands	[0-5]%	[20-30]%	[20-30]%	Not affected
		Catalonia	[10-20]%	[10-20]%	[30-40]%	[20-30]%
		Extremadura	[10-20]%	[5-10] %	[20-30]%	[30-40]%
	Installation (low and medium voltage)	Andalucía	[10-20]%	[5-10]%	[20-30]%	[20-30]%
	Maintenance (low and medium voltage)	Andalucía	[10-20]%	[20-30]%	[40-50]%	[60-70]%
		Aragón	[60-70]%	[0-5]%	[60-70]%	[30-40]%
		Balearic Islands	[80-90]%	[10-20]%	[90-100]%	[30-40]%
		Canary Islands	[0-5]%	[70-80]%	[70-80]%	Not affected
		Catalonia	[30-40]%	[30-40]%	[70-80]%	[50-60]%
		Extremadura	[30-40]%	[20-30]%	[50-60]%	[80-90]%
	Installation (high voltage)	Aragón	[0-5]%	[30-40]%	[30-40]%	Not affected
		Asturias	[10-20]%	[20-30]%	[30-40]%	[20-30]%
		Castilla La Mancha	[0-5]%	[10-20]%	[20-30]%	[5-10]%
		Catalonia	[0-5]%	[20-30]%	[20-30]%	[10-20]%
		Madrid	[0-5]%	[40-50]%	[40-50]%	Not affected
		Valencia	[0-5]%	[10-20]%	[20-30]%	[5-10]%

* *2019 shares (2020 not available).*

5.1.1.1. Low and medium voltage power lines

(A) The Notifying Parties' views

(29) The Notifying Party considers that the market is national in scope, and therefore not affected by the Transaction. In any case, it submits, first, that installation and maintenance services should not be considered separately, as these services are not specific, the same teams providing both services (which require similar expertise) and the main clients acquire both services in a combined way;[35] second, that the Parties' combined shares considering both installation and maintenance remain in all regions moderate; third, that the market is highly competitive, as it is reflected in the numerous tenders which take place, the existence of numerous strong competitors

35 Form CO, paragraphs 353 *et seq*. and 383 *et seq*.. According to the Notifying Party, once a service provider is active in the "installation" segment of medium and low voltage electric lines in Spain, it is necessarily also able to offer maintenance services relating to such lines (as none of these segments require significant supplementary skills or equipment).

and the high volatility of market share; and fourth, that customers have bargaining power.[36]

(B) *The Commission's assessment*

(30) In Spain, there could be affected markets at national and at regional level (see Table 1 Market shares for the Parties in Spain, 2019-2020above).

(B.i) National level

(31) At a national level, there would be only one potentially affected market, the maintenance of low and medium voltage power lines. The Parties had a combined market share of [30-40]% in 2020 (varying from [40-50]% in 2018 and [30-40]% in 2019). Both Parties hold a similar position on this market (e.g. in 2020 Vinci's share was [20-30]% whereas ACS ES' share was [10-20]%). The Parties' market shares over the previous years illustrate that ACS ES' position is on a consistent downward trend, and there are a number of competitors with equivalent capacity and market position as that of the Parties (e.g. Elecnor has a 15-25% market share, Eiffage has a 10-20% market share, and other competitors such as FCC Industrial, Ametel or Siemsa, all with shares between 0-10%). The internal documents provided by the Parties confirm the existence of a large number of competitors.[37]

(32) Even if shares at a national level are less volatile than regional shares (precisely because when a service provider wins a regional contract and loses another one in a different region, the effect of volatility is mitigated at national level), there are substantial variations from one year to another. For example, ACS ES lost more than [5-10] percentage points in only two years (its market share declined from [20-30]% to [10-20]% between 2018 and 2020). Such variations are explained by the fact that the Parties' shares depend on very few large customers (notably Iberdrola, Endesa and Naturgy) and concrete projects, on the way that clients tender and on the results of each call for tender.

(33) The Parties provided tendering data for the last four years showing that contracts are generally awarded for a period of two or maximum three years, which explains the share volatility in relatively short periods. Such tender data also shows that the number of competitors participating in each of these tenders is large, with more than ten or even twenty bidders each time, including large service providers active in Spain such as Elecnor, Eiffage or FCC Industrial.

(B.ii) Regional level

(34) At regional level, there would be potentially affected markets in a number of regions in installation and maintenance combined, and in installation and in maintenance of low and medium voltage lines separately.

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36 The high volatility of market shares is illustrated by the situation in Andalucía (the only region where the Parties' combined market in installation and maintenance exceeds [30-40]%) where the Parties combined market share in 2019 was [40-50]%, which then substantially dropped by more than ten points in 2020. Moreover, the Target lost the contracts it had in this region in January 2021, which means that its share estimation for 2021 would be close to [0-5]%.

37 See presentation provided as Annex 5.4.c […] .

(35) As regards installation and maintenance of low and medium voltage lines combined, six affected regional markets would arise in 2020 (Andalucía, Aragón, Balearic Islands, Canary Islands, Catalonia and Extremadura, see Table 1 above). In none of those markets the combined market shares were above 35%. In three regions, the increment was low or negligible (in any case below 5%), and in the other three regions the increments were between [5-10]-[10-20]%. Market shares appear also to be volatile, with fluctuations of up to 21 percentage points between 2019 and 2020.

(36) As regards installation of low and medium voltage lines, only one regional affected market would arise in 2020 (Andalucía, see Table 1 above). The combined market share was moderate ([20-30]%), and the increment was below 10%.

(37) As regards maintenance of low and medium voltage lines, it is true that market shares are high in some regions. However, the Commission considers that, in the unlikely scenario that the markets for the maintenance of medium and low voltage electric lines were to be defined as regional, the Transaction would also not give rise to serious doubts as to its compatibility with the internal market, for the following reasons (besides those explained in relation to the national market in paragraphs (31)-(33) above):

(38) First, in some regions with high market shares (Aragón, Canary Islands), the market share increment would be very limited or negligible. In Aragón, the combined market share was very high in 2020 ([60-70]% but the increment was less than 5% (ACS ES' share was [0-5]%). Moreover, in 2019 the market shares were drastically different: The combined market share was almost half of that in 2020 ([30-40]%), with similar individual market shares by both Parties (between [10-20]%), which in only one year more than […] in the case of Vinci and were divided by six in the case of ACS ES. In the Canary Islands, the combined market share was [70-80]% in 2020, with a negligible increment of [0-5]%. Moreover, in all these regions there are various competitors with equivalent capacity to that of the Parties which pose an effective constraint, as shown by the fact that their estimated market shares for 2021 indicate that the Parties, in some instances, have negligible positions or were even driven out of those markets in just one year and despite their 2020 market shares (e.g. in Extremadura).[38]

(39) Second, the substantial market shares' fluctuation (see paragraphs (32)-(33)) is indicative of contestable or challengeable market positions, which can vary greatly

[38] E.g. in 2021 the Parties identified strong competitors in the regions with higher combined market shares. For instance, in Andalucía, there are various competitors holding an estimated market share between 0-10% and Elecnor has an estimated market share of 20-30%. In Aragón, UTE PSC-Ullastres holds an estimated market share between 40-50%. In the Balearic Islands Elecnor holds an estimated market share between 40-50%. In the Canary Islands, also Elecnor holds an estimated market share of 30-40% and UTE PSC-Ullastres holds an estimated market share of 10-15%. In Catalonia, Elecnor also has an estimated market share of 30-40%, while Comsa and Melfosur have estimated market shares of 0-20% and 0-10% respectively. In Extremadura Ametel is expected to hold a market share of 70-80% and UTE Mopael a market share of 20-30% (implying that the Parties' market shares in 2021 are minimal or non-existing in that region). According to the Notifying Party, 2021 market share estimates were prepared by ACS ES based on Endesa's tenders (which correspond to the regions of Andalucía, Aragon, Balearic Islands, Canary Islands and Catalonia) and Iberdrola (Extremadura). The Notifying Party explains that currently there is still a tender in process in 2021 that affects Catalonia and Andalucia, but the attribution of this tender will not have any effect until mid-2022, and the outcome is uncertain. Moreover, the Notifying Party considers that according to the bidding conditions for these two regions organised by Endesa, no winning company will be able to obtain a volume larger than a 25% market share for both regions.

very rapidly (i.e. from one year to the next). In Andalucía, for instance, the Parties' combined share was [60-70]% in 2019 and [40-50]% in 2020, i.e. it decreased by [10-20] percentage points. In Extremadura, the shares' fluctuation was even more prominent: the Parties lost [30-40] percentage points in only one year. Conversely, in Aragón, the combined market share increased by [30-40] percentage points in one year, and the Balearic Islands by almost [60-70] points. In the Canary Islands the volatility is even more pronounced: There were no affected markets in 2019 and the combined market share was [70-80]% in 2020. This shows, as confirmed by the market investigation, that high market shares in a region in a given year are the result of the adjudication of certain works but do not imply a stable or incontestable position of market power.

(40) Third, the information provided by the Parties on tenders organised by customers in the last four years in these specific regions (see also paragraph (33)) confirms this contestability. During the period considered in this tender data, there were [40-50] tenders, all concerning contracts of very short duration (mostly two years and at most three years in a few instances). Numerous bidders participated in each of those awards (often more than 10 and in some occasions even more than 20),[39] and there were a non-insignificant amount of tenders in which only one of the Parties participated ([10-20] out of the [40-50] tenders on which the Parties submitted information).

(41) Fourth, the results of the market investigation suggest – in line with the Parties' submissions and the Commission's precedents – that the dividing line between maintenance and installation is not clear-cut, as customers often source maintenance and installation services either through the same contracts or to the same market players. The market investigation suggested that many companies provide services in both fields (see paragraph (14) above), which means that even if installation and maintenance were considered separate products markets, there might be at the very least a certain degree of out-of-market competition, since the Parties would face competitive pressure from the companies active in the other segment which are ready to satisfy demand in both areas. The tendering data provided by the Parties also demonstrates this, showing that the scope of most requests for quotation included both installation and maintenance works.

(42) In this regard, the Commission notes that, as shown in Table 1 above, the Parties' combined market shares in these regions in a segment combining both maintenance and installation works for medium and low voltage electric lines are lower or significantly lower than the shares considering only maintenance.[40] This indicates the existence of out-of-market constraints, i.e. that companies with high shares in one region would face the competitive constraint of the companies active in other regions who are ready to offer their services on a supra-regional level.

(43) Fifth, the demand for maintenance (and installation) services for medium and low power lines is concentrated, customers (distribution system operators, 'DSOs') are

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39 The existence of numerous competitors that participate in tenders in Spain has been confirmed by customers in the market investigation.

40 The combined shares considering both installation and maintenance of medium and low voltage lines are significantly lower: Less than 20% in Spain and below 30% in all regions in Spain except in four, where the combined shares are in any case below 34% (Andalucía: [30-40]%; Aragón: [30-40]%; Balearic Islands: [30-40]%; Catalonia: [30-40]%).

large and sophisticated companies and are natural monopolists in their respective markets, which suggests that they possess bargaining power. In this respect, if the markets were to be defined narrower than national (i.e. regional), the demand would be even more concentrated, as only a few DSOs are present in each region/local area, which would increase further this bargaining power. All competitors responding to the market investigation agreed that customers are generally very large companies, which can dictate or heavily influence the final prices and conditions when they award a new contract.

(44) Sixth, even considering regional markets, the Parties would face considerable out-of-market constraints from competitors in other (sometimes adjacent) regions where the Parties have significantly lower market shares, given that the competitive conditions, prices and regulation are similar throughout the national territory and, therefore, other competitors would likely face low barriers to enter the region in question. Most respondents to the market investigation stated that companies active in electrical engineering services are typically present at national level and that prices are essentially the same throughout the national territory.

(45) Finally, the Commission notes that, regardless of the precise product or geographic scope of the market, customers and competitors have not raised any concerns in the market investigation, and have expressed the view that the markets are competitive and that the Parties would not have the ability to raise prices post-Transaction, as there are numerous other service providers to which customers can switch. In fact, all competitors agreed that customers are generally very large companies, which can dictate or heavily influence the final prices and conditions when they award a new contract.

(46) Also, the vast majority of customers stated that, if post-merger the Parties were to raise prices, they would have other competitors to switch to (none replied that there would not be alternative suppliers), and a majority of competitors also confirmed that if the Parties were to raise prices they could face an increase in demand and serve those customers wanting to switch. Most competitors consider that switching service provider does not entail significant costs and can be done frequently, and most customers were of the same view (even one of the customers who suggested that switching could be difficult, clarified that switching may require 3-4 months and that it may be burdensome from the point of view of technical requirements rather than costs).

5.1.1.2. High voltage power lines

(A) The Notifying Parties' views

(47) The Parties submit that a regional distinction is not relevant for high voltage power lines according to the Commission's previous decisions. In any event, they submit that, even at regional level, the Parties' combined market shares never exceed [40-50]% whatever the region and appear very volatile, as they depend on a few projects,

on the way the clients decide to tender, and on the results of each call for tender or commercial negotiation.[41]

(B) The Commission' assessment

(48) With regard to the installation of high voltage power lines, there are several regionally affected markets in 2020: Aragón, Asturias, Castilla La Mancha, Catalonia, Madrid and Valencia. However, the combined market shares in those regions remain moderate (around or below 35% except in Madrid[42]). In most of these regions, e.g. Aragón, Castilla La Mancha, Catalonia, Madrid and Valencia, the increment was negligible or very small (below 2% in all cases). Only in Asturias the increment was moderate ([10-20]%) and the inter-annual shares' variation also show high volatility in that region (e.g. the Parties' combined share increased from [20-30]% to [30-40]% between 2019 and 2020).

(49) Moreover, in each of those regions there is only one customer for these type of services (Red Eléctrica) and, therefore, demand concentration is extreme and evidences the ability of such customers to drive negotiations with service providers, and to counter any attempted price increase by switching to any of the existing alternative providers.

(50) In addition, the explanations above in paragraphs 39 *et seq*. regarding market shares' volatility, contestability of market positions, and the confirmation from the market investigation that customers and competitors do not see the Transaction as posing any competition concerns are also applicable to the installation of high voltage lines.

(51) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the installation and maintenance of low/medium and high voltage power lines in Spain.

5.1.2. France

(52) Table 2 shows the Parties' market shares in France in 2019 and 2020 for all plausible affected markets.

41 Form CO, paragraph 327. For example, the Basque Country is the region with the highest combined market shares in 2019 ([40-50]), but the Notifying Party considers that this does not reflect any market power as their combined market share did not exceed 4.5% in 2020 in that same region.

42 In Madrid, the combined market share in 2020 was [40-50]%, but there was no affected market in the previous year, and the increment in 2020 was minimal (less than [0-5]%).

Table 2 Market shares for the Parties in France, 2019-2020

Potential Market			2020 market shares			2019 combined shares
			Vinci	Target	Combined	
National						
Installation of overhead power lines (high voltage)			[20-30] %	[5-10]%	[20-30]%	[20-30]%
Installation of underground power lines (high voltage)			[10-20] %	[0-5]%	[20-30]%	[10-20]%
Regional						
Segments by voltage of power lines	Installation (high voltage)	Centre-V. Loire	[10-20] %	[30-40]%	[50-60]%	[20-30]%
		Corsica	[5-10] %	[40-50]%	[50-60]%	Not affected

(53) Within the electrical engineering services market in France, market shares exceeded, both in 2019 and 2020, the 20% threshold on the two market sub-segments where both Parties are active (ACS ES only provides installation services related to (i) high voltage overhead power lines and (ii) high voltage underground power lines that both correspond to separate call for tenders).[43]

(54) For installation of overhead power lines, the estimated combined share was [20-30]% in 2020 (with an increment of [5-10]%). For installation of underground power lines, the estimated combined share was [20-30]% in 2020 (with an increment of [0-5]%).

(55) Moreover, if a distinction was to be made according to the voltage of the power lines, and the markets were to be defined regionally, there would be affected regional markets for the installation of high voltage power lines in Centre-Val de Loire and Corsica. In France, the Target is not active on the potential segment of maintenance of high voltage electric lines.

5.1.2.1. The Notifying Party's views

(56) The Notifying Party submits that there are no affected markets according to the Commission's previous decisional practice and that, therefore, no competition concerns arise from the Transaction. The Notifying Party recalled that the geographic dimension of the market of high voltage lines is not regional, but national, high regional shares are not stable, and do not imply any dominance or market power, but only reflect that a call for tender regarding the region has recently been won, and that there is only one client in each region (i.e. RTE or EDF SEI).[44]

43 The Parties activities do not overlap in low-medium voltage lines in France.

44 Form CO, paragraphs 336-337. According to the Notifying Party, all significant market players are able to be successful in a call for tender whatever the region of France, and this is confirmed by the fact that the market shares vary from one year to another as a result of the call for tenders. As an example, in certain regions, Vinci's market shares were divided by almost two in 2020, whereas ACS ES's market shares were divided by ten.

5.1.2.2. The Commission's assessment

(57) In France, distinguishing between underground and overhead power lines, the Parties' combined market share at national level in the installation segments leads to affected markets, but is still relatively low and with a limited presence of ACS ES. The combined market shares remain below 30% in both 2019 and 2020 (and, in the case of underground power lines, below 20% in 2019), and the Target's market share is in both cases around [5-10]% ([5-10]% for overhead lines and [0-5]% for underground lines in 2020).

(58) Moreover, in the last three years, the majority of both Parties' turnover in power lines in France was generated through one long-term framework agreement concluded with RTE and resulting from one call for tender.[45]

(59) With regard to overhead power lines, the Target answers calls for tenders jointly (in a consortium) with Lebag, Eqos and Helcom. Moreover, the Parties will continue to face competitive pressure from large competitors in call for tenders for overhead power lines (e.g. Bouygues Energies Services 2018, EIFFAGE Energies Systèmes and INABENSA/CI2000 Consortium – all with market shares between 15-20% in 2020, and also Engie INEO/Cetim Consortium, with a market share between 10-15% in 2020.

(60) With regard to underground power lines, the increment brought by the Target ([0-5]%) is even less representative considering that ACS ES is present in the market through its subsidiary SEMI, that answers calls for tenders as part of a consortium with Inabensa and Eqos.

(61) The Parties will continue to face substantial competitive pressure from numerous competitors present in the market which answer calls for tenders for underground power lines such as Engie Ineo, EIFFAGE Energies Systèmes, Consortium SPIE/ Thepault, Consortium Serpollet/ ETPM (all with market shares between 10-20% in 2020), as well as a number of smaller competitors (e.g. Sobeca, EHTP, Sade, and Satelec), all with market shares between 5-10% in 2020).[46]

(62) With respect to the segment for the installation of high voltage power lines, there are two regional affected markets in 2020, Centre-Val de Loire and Corsica with combined market shares of [50-60]% and [50-60]% respectively. In both cases, market shares do not appear to reflect accurately a position of market power given their strong fluctuation (in only one year, the market share varied in about [30-40] percentage points in Centre-Val de la Loire, and also in more than 30 percentage points in Corsica – which was not even one of the regions where the Parties' activities led to affected markets in 2019).

(63) As explained in paragraph (43) above for the maintenance and installation of low and medium voltage lines, the demand is very concentrated. Customers are large and sophisticated companies and are natural monopolists in their respective markets, which suggests that they possess bargaining power. In the case of installation of high voltage lines in France, demand is even more concentrated, since in each of those regions there is only one customer for these type of services (either RTE or EDF

45 Form CO, paragraph 419.

46 Form CO, paragraph 431.

SEI). This evidences the ability of such customers to drive negotiations with service providers, and to counter any attempted price increase by switching to any of the existing alternative providers (such as Bouygues Energies Services, EIFFAGE Energies Systèmes, Engie INEO, Inabensa, CI2000, SNEF and SPIE). All competitors responding to the market investigation agreed that customers are generally very large companies, which can dictate or heavily influence the final prices and conditions when they award a new contract.

(64) The market investigation confirmed that neither customers nor competitors expect the Transaction to have a negative impact on competition in those markets.

(65) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the installation of high voltage power lines in France.

5.2. Mechanical engineering services

(66) As regards the mechanical engineering services, if the market was to be defined as regional, the Transaction would only give rise to an affected market in the maintenance of infrastructures in the Region of Madrid, Spain. In this potential market, ACS ES' share would be [20-30]% and Vinci's less than [0-5]%, with a combined share post-Transaction of around [20-30]%.[47]

(67) Even if the markets were to be defined as regional, the Commission considers unlikely that the Transaction may give rise to any serious doubts as to its compatibility with the internal market. First, Vinci's presence in the region is symbolic (EUR […] in 2020 and EUR […] in 2019), which results in a very limited increment. Second, ACS ES's presence in the Madrid region mainly concerns services for aircraft maintenance and ground handling equipment, areas in which Vinci is not active, which means that the competitive pressure they exert on each other is, in the best of cases, very limited. Third, there are other competitors active in the market with shares higher than those of Vinci. Fourth, the market invstigation has not revealed any concerns in this market.

(68) For these reasons, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to mechanical engineering services in Spain.

[47] At national level, their combined market share in this segment would be [10-20]% (ACS ES: [10-20]%; Vinci: [0-5]%).

6. CONCLUSION

(69) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President