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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Eiffage Energie Systèmes – Participations SAS
3-7 Place de l'Europe
78140 Vélizy-Villacoublay
France

Subject: **Case M.11577 – EIFFAGE / EQOS**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) 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 28 August 2024, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Eiffage Energie Systèmes – Participations SAS ('EES' or the 'Notifying Party', France), ultimately controlled by Eiffage S.A. ('Eiffage' France) will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of EQOS Energie Deutschland GmbH ('EQOS', Germany) and its subsidiaries by way of purchase of shares (the 'Transaction').[3] Eiffage and EQOS are designated hereinafter as the 'Parties'.

[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').
[3] OJ C, C/2024/5438, 5.9.2024.

1. THE PARTIES

(2) **Eiffage** is a French construction and concessions group operating in construction, infrastructure, concessions and energy. EES, a wholly owned subsidiary of Eiffage, provides energy solutions for the design, building, operation and maintenance of various systems and facilities, used in the electrical sector, for industrial and energy engineering or for heating, ventilation and air conditioning.

(3) **EQOS** is a German-based multinational group specializing in the construction, maintenance and optimisation of infrastructure solutions in the areas of railway technology, overhead line construction, energy, communications, industrial technology and engineering.

2. THE OPERATION

(4) The Transaction consists of the acquisition of EQOS by Eiffage through the acquisition of 100% of the share capital of EQOS. EES and EQOS Energie Holding S.à.r.l, current sole shareholder of EQOS, entered into a share purchase agreement on 23 April 2024. Through this Transaction, Eiffage will acquire sole control of EQOS and the Transaction thus constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Eiffage: EUR […]; EQOS: EUR […] million).[4] Each of them has a Union-wide turnover in excess of EUR 250 million (Eiffage: EUR […] billion; EQOS: EUR […] million) and none of the Parties achieved more than two-thirds of its aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITIONS

(6) The Transaction gives rise to horizontally affected markets for (i) the installation and maintenance of catenaries and overhead contact lines for long distance lines in Belgium (Section 4.1), and (ii) electrical engineering services for the installation of high voltage overhead powerlines in France (Section 4.2).

(7) The Transaction also results in horizontal overlaps[5] and vertical links[6] for several other markets. Since none of these horizontal overlaps or vertical links give rise to affected markets within the meaning of paragraph 25(g) of Annex I of

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4 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

5 Namely, the markets for: (i) the installation of high-voltage underground powerlines in France, (ii) the installation of high-voltage overhead powerlines in Belgium and (iii) Germany; (iv) the installation of electrical substations in Belgium and (v) France.

6 Between the market for the supply of catenary equipment (upstream) and the market for the installation and maintenance of catenaries and overhead contact lines and all of its subsegments (downstream).

Commission Implementing Regulation (EU) 2023/914,[7] as they meet the conditions for review under point 5 of the Notice on a simplified treatment,[8] they will not be assessed in detail in this Decision.

4.1. Installation and maintenance of catenaries and overhead contact lines

4.1.1. Product market definition

(8) The catenary system forms an integral part of the railway electrification and provides power to electrically operated vehicles like trains and trams, as well as trolleybuses. Electrical power is supplied to moving trains through a nearly continuous conductor running along the track.[9] The catenary system comprises an overhead contact line and a catenary. The overhead contact line is the electrical cable, which is suspended above the train and transmits electrical energy to the train, while the catenary is a stabilizing cable attached to the overhead line.[10]

4.1.1.1. Commission's precedents

(9) In previous decisions, the Commission defined a separate market for the installation and maintenance of catenaries and overhead contact lines, distinct from the manufacture and supply of such equipment.[11] The Commission also distinguished this market from the installation and maintenance of third rail systems.[12]

(10) Within the installation and maintenance of catenaries and overhead contact lines, the Commission concluded that installation and maintenance services form part of the same market,[13] but the Commission left open further segmentations (i) between long-distance and metropolitan rail,[14] and - within long-distance rail - (ii) between conventional and high-speed lines.[15]

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7 Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023, p. 22.

8 Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C160, 5.5.2023, p. 1). For horizontal overlaps on the markets for (i) the installation of high-voltage underground powerlines in France (see paragraph 5(d)(i)(aa) of the Notice on a simplified treatment), (ii) the installation of high-voltage overhead powerlines in Belgium (see paragraph 5(d)(i)(aa) of the Notice on a simplified treatment) and (iii) Germany (see paragraph 5(d)(i)(aa) of the Notice on a simplified treatment); (iv) the installation of electrical substations in Belgium (see paragraph 5(d)(i)(aa) of the Notice on a simplified treatment) and (v) France (see paragraph 5(d)(i)(aa) of the Notice on a simplified treatment). For the vertical link between the market for the supply of catenary equipment and the market for the installation and maintenance of catenaries and overhead contact lines and all of its subsegments (see paragraph 5(d)(ii)(bb) of the Notice on a simplified treatment).

9 Form CO, paragraphs 98-99.

10 COMP/M.10575 – Bouygues/Equans, paragraph 12.

11 COMP/M.10575 – Bouygues/Equans, paragraph 25.

12 COMP/M.10575 – Bouygues/Equans, paragraph 22.

13 COMP/M.10575 – Bouygues/Equans, paragraph 21.

14 COMP/M.9483 – ENGIE /Powerlines, paragraphs 10-14.

15 COMP/M.10575 – Bouygues/Equans, paragraph 25.

4.1.1.2. Notifying Party's view

(11) The Notifying Party agrees with most of the segmentations previously contemplated by the Commission.[16] In particular, it submits that a distinction should be made between long distance and metropolitan rails because customers are different and certain competitors do not provide both types of services (including Eiffage).[17] The Notifying Party also argues that a distinction between conventional and high-speed railway tracks is not relevant.[18]

4.1.1.3. Commission's assessment

(12) Overall, the results of the market investigation are in line with the previous findings of the Commission in its past decisions concerning the definition of the relevant market for the installation and maintenance of catenaries and overhead contact lines.

(13) *First*, a distinction between catenaries and overhead contact lines does not appear relevant as customers and suppliers of installation and maintenance services are the same for these two types of equipment.[19] However, this is not the case for third rail systems and a distinction between catenaries and overhead contact lines, on the one hand, and third rail systems, on the other hand, thus appears relevant.[20]

(14) *Second*, the market investigation elicited mixed results concerning the relevance of a distinction between installation and maintenance services. From a demand perspective, such distinction could be relevant to the extent that some customers only purchase installation services and take care of maintenance in house.[21] From a supply perspective however, installers of catenaries and overhead contact lines usually provide or can easily provide maintenance services for such equipment and vice versa.[22]

(15) *Third*, the results of the market investigation were inconclusive concerning a segmentation between the installation and maintenance of catenaries and overhead contact lines for long distance lines and metropolitan rails. On the one hand, customers on these segments are different and some competitors are specialized in long distance lines or metropolitan lines (e.g. […]).[23] On the other hand, the vast majority of competitors who participated to the investigation confirmed that they usually offer or could easily carry out projects on both types of lines (i.e. long distance lines and metropolitan rails).[24]

(16) *Finally*, within long distance lines, a distinction between conventional and high-speed (or very high-speed) lines does not seem relevant. From a demand perspective, customers tend to have the same contracts or framework agreements

16 Form CO, paragraph 129.
17 Form CO, paragraph 132.
18 *Ibid.*
19 Questionnaire Q3 to customers – Catenaries and overhead contact lines (question B.2); questionnaire Q1 to competitors – Catenaries and overhead contact lines (question C.3).
20 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question C.2).
21 This is the case in Belgium in particular (questionnaire Q3 to customers (question C.6)).
22 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question C.3).
23 Questionnaire Q3 to customers – Catenaries and overhead contact lines (question B.2).
24 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question C.4).

for these different types of lines,[25] and from a supply perspective, the same suppliers are active across all segments.[26]

(17) In any event, the exact product market definition would not change the outcome of the competitive assessment as the Parties' activities overlap only with respect to long-distance lines in Belgium, where Infrabel is the only customer purchasing installation services exclusively (i.e. not maintenance services)[27] and only for conventional lines (or for bundled projects, including both conventional and high-speed or very high-speed lines).[28,29] In this context and for the purpose of this Decision, the Commission will assess the effects of the Transaction on the narrowest plausible market for the installation of catenaries and overhead contact lines for conventional long-distance lines, as well as on a broader market for the installation of catenaries and overhead contact lines for both conventional long-distance lines and metropolitan rails.

4.1.2. Geographic market definition

4.1.2.1. Commission's precedents

(18) In past decisions, the Commission considered the market for the installation and maintenance of catenaries and overhead contact lines to be national, although it did not exclude that such market could extend to multiple Member States or to the EEA.[30] In *Bouygues / Equans*, however, the Commission found clear indications that this market and its narrower segments for long-distance rail and metropolitan rail were national.[31]

4.1.2.2. Notifying Party's view

(19) The Notifying Party submits that the geographical scope of the market for the installation and maintenance of catenaries and overhead contact lines is national and that no distinction should be made in the specific case of Belgium between Flanders and Wallonia (including Brussels). Whilst language plays an important role in choosing a service provider in Belgium, the Notifying Party considers that this constraint applies only to French-speaking service providers seeking to carry out catenary works in Flanders and not the other way around. In addition, the Notifying Party stresses that several service providers are active in all Belgium (i.e. in Flanders and Wallonia (including Brussels)).[32]

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25 Questionnaire Q3 to customers – Catenaries and overhead contact lines (questions C.9 – C.11).

26 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (questions C.5 and C.6).

27 Infrabel takes care of the maintenance of catenaries and overhead contact lines in-house (Questionnaire Q3 to customers – Catenaries and overhead contact lines (question C.6).

28 This is because at the moment and in the foreseeable future, there is no significant catenary/overhead contact line work to be contracted out for high-speed long-distance lines on a standalone basis (Minutes of a call with a customer for the installation and maintenance of catenaries and overhead contact lines in Belgium of 26 June 2024, paragraph 3).

29 As a result, the Parties' market shares remain the same irrespective of a distinction between installation and maintenance services and/or between conventional lines and high-speed (or very high speed) lines.

30 COMP/M.9483 – ENGIE / Powerlines, paragraphs 17-19.

31 COMP/M.10575 – Bouygues/Equans, paragraphs 28-29.

32 Form CO, paragraph 154.

4.1.2.3. Commission's assessment

(20) The results of the market investigation indicate that the relevant geographic market for the installation and maintenance of catenaries and overhead contact lines is not broader than national. This is because customers are national infrastructure managers with national specifications and requirements.[33] It can also be noted that suppliers are usually based in the country where the customer is located,[34] and that the market is characterized by the existence of national standards and certification bodies.[35]

(21) Concerning a segmentation in Belgium between Flanders and Wallonia (including Brussels), the market investigation elicited mixed results. On the one hand, the only customer for long distance line in Belgium has different framework agreements in each region,[36] and certain suppliers specialize in one region,[37] generally because of the difference in language in these two regions, which can play as barrier to entry and expansion.[38] […].[39]

(22) On the other hand, there is only one customer, and this is the same in both regions (i.e. Infrabel).[40] In addition, all the competitors who participated in the market investigation indicated that they could easily offer installation and maintenance services for catenaries and overhead contact lines in both regions.[41]

(23) In any event, the exact geographic market definition would not change the outcome of the competitive assessment as the Transaction gives rise to serious doubts as to its compatibility with the internal market for the installation and maintenance of catenaries and overhead contact lines for long distance lines in Belgium, both at national and regional levels. For the purpose of this Decision, the Commission will thus assess the effects of the Transaction on the market for the installation and maintenance of catenaries and overhead contact lines for long distance lines in Belgium, both at national level (i.e. in Belgium) and at regional level (i.e. in Wallonia, including Brussels).[42]

4.2. Electrical engineering services for power lines

4.2.1. Product market definition

(24) The Parties overlap in the provision of electrical engineering services in the infrastructure sector in France. This sector includes engineering services in

33 Questionnaire Q3 to customers – Catenaries and overhead contact lines (question D.2); questionnaire Q1 to competitors – Catenaries and overhead contact lines (question D.1).

34 Questionnaire Q3 to customers – Catenaries and overhead contact lines (question D.1); questionnaire Q1 to competitors – Catenaries and overhead contact lines (question D.2).

35 Questionnaire Q3 to customers – Catenaries and overhead contact lines (question D.2).

36 Questionnaire Q3 to customers – Catenaries and overhead contact lines (question D.5).

37 Questionnaire Q3 to customers – Catenaries and overhead contact lines (question D.6.1).

38 Questionnaire Q3 to customers – Catenaries and overhead contact lines (questions D.7 and D.8).

39 Minutes of a call with a customer for the installation and maintenance of catenaries and overhead contact lines in Belgium of 26 June 2024, paragraphs 10 and 16.

40 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question D.10.1).

41 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (questions D.6 and D.8).

42 In any event, the regional level (i.e. Wallonia, including Brussels) would be relevant also for the assessment of the effects of the Transaction for the installation and maintenance of catenaries and overhead contact lines at national level in Belgium to assess the closeness of competition between the Parties.

various industries like telecommunications (for the installation of fixed telecoms networks), power transmission (for the installation and maintenance of power lines and substations) or public lighting. In the case at hand, the Parties overlap for electrical engineering services for the installation of high voltage overhead power lines in France.

4.2.1.1. Commission's precedents

(25) In previous decisions, the Commission distinguished (i) electrical engineering services, (ii) mechanical engineering services, and (iii) heat, ventilation and air-conditioning ('HVAC") engineering services.[43]

(26) Within each category, the Commission considered separate markets based on (i) the type of work (installation versus maintenance) and (ii) the type of customers (residential versus non-residential, and – among non-residential customers - between infrastructure, industrial and tertiary customers).[44]

(27) Regarding electrical engineering services for infrastructure projects, the Commission distinguished different types of infrastructure: (i) telecommunication networks,[45] (ii) electrical substations,[46] (iii) power lines[47] and (iv) public lighting (including other electrical urban equipment).[48]

(28) For power lines in particular, the Commission also contemplated, but ultimately left open, a possible segmentation by (i) type of voltage (between high voltage,[49] and medium/low voltage)[50] and (ii) type of installation (between overhead and underground power lines).[51]

4.2.1.2. Notifying Party's view

(29) The Notifying Party agrees with the Commission's distinction between electrical engineering services for power lines and other types of infrastructure.[52] Within the segment for power lines, the Notifying Party considers that a further segmentation between high-voltage and medium / low-voltage is not warranted. It also considers that further distinctions between overhead and underground lines, or between installation and maintenance services are not relevant because these services are sourced by the same customers and generally involve the same providers.[53]

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43 M.9270 – Vinci Airports/Gatwick Airport, paragraph 21; COMP/M.6623 – Vinci/EVT Business, paragraphs 7 *et seq*; COMP/M.5701 – Vinci/Cegelec, paragraphs 9 *et seq*.; COMP/M.3004 – Bravida/Smeco/Prenad, paragraphs 8 *et seq*.

44 M.10314 – Vinci S.A./Energia y Servicios Dinsa II, paragraph 9.

45 COMP/M.5701 – Vinci/Cegelec, paragraph 22

46 COMP/M.5701 – Vinci/Cegelec, paragraph 23.

47 COMP/M.6623 – Vinci/EVT Business, paragraphs 10 *et seq*; COMP/M.5701 – Vinci/Cegelec, paragraphs 21 *et seq*., M.10314 – Vinci S.A./Energia y Servicios Dinsa II, para 13.

48 COMP/M.7137 – EDF/Dalkia en France, paragraphs 132-139.

49 i.e. above 50 000 volts.

50 i.e. below 50 000 volts.

51 COMP/M.10575 – Bouygues/Equans, paragraph 43.

52 Form CO, paragraph 424.

53 Form CO, paragraph 425-426.

4.2.1.3. Commission's assessment

(30) The market investigation did not elicit any result that would put into question the previous findings of the Commission concerning the relevance of a distinction (i) between (i) electrical engineering services, (ii) mechanical engineering services and (iii) HVAC engineering services, or within each of these categories, (ii) by type of work (installation versus maintenance) and/or (ii) by type of customers (i.e. residential versus non-residential, and – among non-residential customers - between infrastructure, industrial and tertiary customers).

(31) The results of the market investigation confirmed the findings of the Commission in its previous decisions concerning the relevance of a distinction between installation services of powerlines and substations. This is because substations and powerlines are used for different purposes,[54] and customers tend to have separate contracts or framework agreements for the installation and/or maintenance of these two types of equipment.[55]

(32) Likewise, the results of the market investigation confirmed that a distinction between the installation of high voltage and medium / low voltage power lines could be relevant as the list of customers varies between these two segments[56] and some suppliers tend to specialise in only one segment. As one competitor explained '*There are specific companies for each segment, but some major companies such as Eiffage ES and Eqos or Vinci Energie, Spie and Equans are structured to address the needs of both market segments*'.[57]

(33) However, the market investigation elicited mixed results as to the relevance of a segmentation between the installation of overhead and underground power lines. On the one hand, most competitors consider that such distinction is not relevant as a majority of them can carry out projects on both types of lines.[58] As one competitor explained: '*Players can easily position themselves in these sub-segments, even if the associated risks and implementation issues are not the same*'.[59]

(34) On the other hand, one of the main customers in France has separate framework agreements for the installation and/or maintenance of these two types of power lines, and the list of pre-selected suppliers varies between each framework agreement, with some suppliers specialized in one type of power lines (i.e. overhead or underground).[60] The Notifying Party also makes a distinction between overhead and underground power lines in its internal documents.[61]

(35) In any event, the exact product market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the

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54 Substations consist of local installations which are designed to reduce the voltage of electrical power transmission, whereas power lines refer to the cables used to convey electricity on the power transmission networks.

55 Questionnaire Q4 to customers – Power lines (question C.1).

56 Questionnaire Q4 to customers – Power lines (question C.A.5.1).

57 Questionnaire Q4 to customers – Power lines (question C.1.1).

58 Questionnaire Q4 to customers – Power lines (question C.3).

59 Questionnaire Q4 to customers – Power lines (question C.3.1).

60 Minutes of a call with a customer for the installation and maintenance of power lines in France of 17 July 2024, paragraph 7.

61 See e.g. Form CO, Annex 30 (page 8).

internal market under any plausible market definition. The overlaps between the Parties' activities lead to affected markets only in engineering services for the installation of high voltage powerlines. Therefore, for the purpose of this Decision, the Commission will assess the effects of the Transaction on that market.

4.2.2. Geographic market definition

4.2.2.1. Commission's precedents

(36) In previous decisions, the Commission considered the markets for the provision of electrical engineering services to be at least national in scope.[62] With respect to the largest Member States, such as France, the Commission also considered regional markets, i.e. narrower than national, but ultimately left the exact geographic delineation of these markets open.[63] With respect to the installation of high-voltage power lines in particular (including overhead power lines), the Commission considered that this market was national but also contemplated the possibility to define this market as regional in scope.[64]

4.2.2.2. Notifying Party's view

(37) The Notifying Party considers that the market for the provision of electrical engineering services for high-voltage power lines is at least national in scope, and that a segmentation at regional level in France is not relevant because suppliers provide services throughout France and RTE, which represents […]% of the demand for the installation of high-voltage power lines, sources these services exclusively in the context of national framework agreements.[65]

4.2.2.3. Commission's assessment

(38) The results of the market investigation point towards the definition of a national market for the installation and/or maintenance of power lines in France. Customers on this market launch national calls for tenders and/or enter into national framework agreements, in the context of which they can allocate their various projects between their various selected suppliers on a national basis.[66] This is especially the case for high voltage overhead power lines in France, for which there is one main customer at national level, who confirmed that the allocation of his various projects is done one a case-by-case basis, at national level.[67] This is also consistent with the views expressed by a majority of competitors.[68]

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62 COMP/M.9270 – Vinci Airports/Gatwick Airport, paragraph 24; COMP/M.6623 – Vinci/EVT Business, paragraph 14; COMP/M.5701 – Vinci/Cegelec, paragraphs 27 *et seq* ; COMP/M.10314 – Vinci S.A./Energia y Servicios Dinsa II.

63 COMP/M.5701 – Vinci/Cegelec, paragraph 28.

64 COMP/M.5701 – Vinci/Cegelec, paragraph 33; COMP/M.10314 – Vinci S.A./Energia y Servivios Dinsa II, paragraph 19; COMP/M.10575 – Bouygues/Equans, paragraphs 80 and 86.

65 Form CO, paragraphs 433-435.

66 Minutes of a call with a customer for the installation and maintenance of power lines in France of 17 July 2024, paragraph 7; questionnaire Q2 to competitors – Power lines (question D.A.4).

67 Minutes of a call with a customer for the installation and maintenance of power lines in France of 17 July 2024, paragraph 7.

68 Questionnaire Q2 to competitors – Power lines (question D.A.1).

(39) In any event, the exact geographic market definition can be left open as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible geographic market definition. For the purpose of this Decision, the Commission will assess the effects of the Transaction at regional level in France as this is the only geographic market definition for which the Transaction gives rise to affected market for the installation of high voltage overhead power lines.

5. COMPETITIVE ASSESSMENT

(40) The Transaction gives rise to horizontally affected markets for:

(a) the installation and maintenance of catenaries and overhead contact lines for long distance lines in Belgium; and

(b) electrical engineering services for the installation of high voltage overhead powerlines in France.

5.1. Legal framework

(41) The Commission's Guidelines on the assessment of horizontal mergers under the Merger Regulation (the 'Horizontal Merger Guidelines') distinguish two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.69

(42) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour. According to recital 25 of the Merger Regulation, a significant impediment to effective competition can result from the anticompetitive effects of a concentration even if the merged entity would not have a dominant position on the market concerned. In this regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.70

(43) The Horizontal Merger Guidelines list a number of factors, which may influence the extent to which horizontal non-coordinated effects arise from a merger, such as: the large market shares of the merging firms; the fact that the merging firms are close competitors; the limited possibilities for customers to switch suppliers; or the fact that the merger would eliminate an important competitive force. This list of factors applies if a merger would create or strengthen a dominant position or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of those factors need to be present to make significant non-coordinated effects likely and the list itself is not an exhaustive list.[71]

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69 OJ C 31, 5.2.2004, p. 5. The remainder of this Decision focuses on non-coordinated effects.

70 Horizontal Merger Guidelines, paras. 24-38.

71 Horizontal Merger Guidelines, paras. 24-38.

5.2. Installation and maintenance of catenaries and overhead contact lines (Belgium)

(44) Eiffage is active in the installation of catenaries and overhead contact lines for long distance lines in Belgium through its subsidiary Duchêne SA. EQOS is active in the installation of catenaries and overhead contact lines in Belgium, for both long distance lines (through its subsidiary EQOS Energie Belgium SA)[72] and metropolitan lines (through its subsidiary EQOS Deutschland GmbH).

(45) The Parties' activities overlap only with respect to the installation and maintenance of catenaries and overhead contact lines for conventional long-distance[73] lines in Belgium (only in the French-speaking area, namely Wallonia and Brussels).

5.2.1. Market shares

5.2.1.1. National level (Belgium)

(46) The table below provides an overview of the Parties' and their main competitors' value market shares[74] at national level, over the past three years.

Table 1 – Installation and maintenance of catenaries and overhead contact lines for long distance lines: value market shares (Belgium, 2021-2023)

Competitor	2021		2022		2023	
	m€	%	m€	%	m€	%
Eiffage (Duchêne)	[…]	[10-20]%	[…]	[20-30]%	[…]	[20-30]%
EQOS	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	[…]	***[30-40]%***	[…]	***[35-45]%***	[…]	***[40-50]%***
Mobix	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Equans	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Strukton	[…]	[10-20]%	[…]	[5-15]%	[…]	[10-20]%
De Witte	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-15]%
Others	[…]	[5-15]%	[…]	[0-10]%		
Total	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Form CO, Table 5

(47) Since the sourcing of installation and maintenance services for catenary and overhead contact lines principally takes place through tenders and given the

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72 This company was formerly known as Colas Rail Belgium and was acquired by EQOS in 2022 as part of the commitments offered by Bouygues to the European Commission in the context of its acquisition of Equans (COMP/M.10575 – Bouygues / Equans).

73 EQOS is also active on the market for the installation and maintenance of catenaries and overhead contact lines for conventional metropolitan lines (i.e. trams and metros) in Belgium, however Eiffage is not active on this market.

74 Since the market for the installation and maintenance of catenaries and overhead contact lines refers to services rather than products, the Parties were only able to provide value market share estimates (see Form CO, paragraph 198).

relatively limited size of the affected markets, market shares may vary from year to year, depending on the award of each particular tender. In this context, the table below provides an overview of the Parties' and their main competitors' market shares by reference to the shares of tenders won (in value and in number) over the past five years (i.e. 2019-2024).

Table 2 – Percentage of tenders won (in value and in numbers) for the market for the installation and maintenance services of catenaries and overhead contact lines in Belgium on the long-distance segment (2019-2024).

[…]

(48) Although the Parties' activities overlap only on the market for the installation and maintenance of catenaries and overhead contact lines for long distance lines in Belgium, EQOS is also active on the market for short distance lines (i.e. metropolitan lines, including trams and metros). As a result, the Parties' activities also overlap on a broader product market including both long distance and short distance (metropolitan) lines.

Table 3 – Installation and maintenance of catenaries and overhead contact lines for long distance and short distance lines: value market shares (2023)[75]

Supplier	Long-distance and short distance		Short distance	
	m€	%	m€	%
Eiffage	[…]	[10-20]%	[…]	[0-5]%
EQOS	[…]	[20-30]%	[…]	[25-35]%
Combined	[…]	***[35-45]%***	[…]	[25-35]%
Equans	[…]	[20-30]%	[…]	[40-60]%
Total	[…]	**100%**	[…]	**100%**

Source: P1 RFI 12, question 1

5.2.1.2. Regional level (Wallonia and Brussels)

(49) For completeness, the tables below provide an overview of the Parties' and their main competitors' value market shares[76] in the only region where they actually compete (i.e. Wallonia and Brussels) over each of the past three years (Table 4) and as an average of the number of tenders won over the past five years (Table 5).

75 The Parties were not able to provide equivalent market share estimates over the past three years.

76 Since the market for the installation and maintenance of catenaries and overhead contact lines refers to services rather than products, the Parties were only able to provide value market share estimates (see Form CO, paragraph 198).

Table 4 – Installation and maintenance of catenaries and overhead contact lines for long distance lines:[77] value market shares (Wallonia and Brussels, 2021-2023)

Competitor	2021		2022		2023	
	m€	%	m€	%	m€	%
Eiffage (Duchêne)	[…]	[35-45]%	[…]	[40-50]%	[…]	[40-50]%
EQOS	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Combined	[…]	***[55-65]%***	[…]	***[60-70]%***	[…]	***[65-75]%***
Mobix	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-10]%
Equans	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Strukton	[…]	[0-10]%	[…]	[0-10]%	[…]	[0-5]%
Others	[…]	[10-20]%	[…]	[5-15]%	[…]	[0-10]%
Total	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Form CO, Annex 19

Table 5 – Percentage of tenders won (in value and in numbers) for the installation and maintenance of catenaries and overhead contact lines in Wallonia and Brussels on the long-distance segment (2019-2024)

[…]

5.2.2. Commission's assessment

(50) In view of the information gathered during the market investigation, the Transaction is likely to significantly impede effective competition on the market for the installation and maintenance of catenaries and overhead contact lines in Belgium for long distance and short distance (metropolitan) lines as well as for long distance lines only.

(51) *First*, the Transaction would create a new market leader at national level with a large market share on the market for the installation and maintenance of catenaries and overhead contact lines for long distance lines comprised between [40-50]% and a significant increment ([15-25]%). The Parties' combined market share is almost twice as large as the next competitor, i.e. Mobix ([20-30]%) and significantly larger than Equans ([10-20]%) and Strukton ([10-20]%).

(52) The same observation can be made when looking at the number of tenders won over the past five years on the market for the installation and maintenance of catenaries and overhead contact lines for long distance lines: the Transaction would create a new market leader with a market share of […]% in value ([…]% in number of tenders) and an increment of […]% ([…]% in number of tenders). This combined market share is significantly larger than the market shares of Mobix ([…]% in number of tenders), Strukton ([…]% in number of tenders), Equans ([…]% in number of tenders), De Witte ([…]% in number of tenders), Besix ([…]% in number of tenders) and ETF (<[…]% in number of tenders).

[77] The Parties were not able to provide equivalent market shares on a broader market including both long distance and short distance lines at regional level for the past three years.

(53) The market structure is similar on a broad product market encompassing the installation and maintenance of catenaries and overhead contact lines for both long distance and short distance (metropolitan) lines. On this market, the Transaction brings about a significant increment ([10-20]%), giving rise to a new market leader with a very large combined market share ([35-45]%), almost [multiplicator] as large as Equans ([20-30]%).

(54) *Second*, the Parties are particularly strong competitors in Wallonia (including Brussels) […] where Eiffage is active, competing head-to-head with EQOS. As shown above, the combined market share of the Parties in installation and maintenance of catenaries and overhead contact lines for long distance lines in this region is equal to [65-75]% in 2023, with an increment of [20-30]%. Only two competitors would remain with a market share exceeding [5-10]% post Transaction, namely: Equans ([10-20]%) and Mobix ([5-10]%).

(55) This is further confirmed by the tender data over the past five years showing that the Parties have a market share of […]% in value ([…]% in number of tenders) in Wallonia (including Brussels) compared to […]% for Equans ([…]% in number of tenders), […]% for Strukton ([…]% in number of tenders) and […]% for Mobix ([…]% in number of tenders).

(56) *Third*, the number of participants in each call for tenders is significantly lower than the number of players currently active on the market.

Table 6 – Number of bidders per tender for the installation and maintenance of catenaries and overhead contact lines for long distance lines in Belgium (2019-2024)

[…]

(57) As shown above, […].

(58) This was confirmed by a customer who explained that: '*In general all eight main suppliers/contractors can meet all of the Company's requirements and therefore these eight receive contracts when they win tenders. However, not all eight suppliers bid in each tender – the actual number of bidders is often significantly lower* […]. *While the Company has eight registered main contractors, they do not all participate in all tenders – instead, the Company experiences tenders where only two, three or four contractors participate* '.[78]

(59) *Fourth*, the Parties' bidding data at national level shows that the Parties compete closely at national level for the installation of catenaries and overhead contact lines for long distance lines in Belgium.

[78] Minutes of a call with a customer for the installation and maintenance of catenaries and overhead contact lines in Belgium of 26 June 2024, paragraphs 9 and 20.

Table 7 – Participation rates (Belgium, 2019-2023)[79]

[…]

Table 8 – Competition rates (Belgium, 2019-2024)[80]

[…]

(60) According to the Parties' bidding data:

(a) […];

(b) […];

(c) […];[81]

(d) […].[82]

(61) This is consistent with the responses received from customers[83] and competitors[84] during the market investigation, who largely confirmed that the Parties are close competitors for the installation of catenaries and overhead contact lines in Belgium.

(62) *Fifth*, the Parties' bidding data at regional level in Wallonia (including Brussels)[85] further confirms that the Parties are particularly close competitors.

Table 9 – Participation rates (Wallonia incl. Brussels, 2019-2023)[86]

[…]

Table 10 – Competition rates (Wallonia incl. Brussels, 2019-2024)[87]

[…]

(63) In view of the foregoing:[88]

(a) […];

(b) […];

(c) […];

(d) […];

(64) *Sixth*, the results of the market investigation point to the existence of high barriers to entry and expansion due to a significant shortage of qualified workers (i.e. linesmen) which translates into important capacity constraints. As one customer

79 Participation rate = number of bids / total awarded tenders.

80 Competition rate = number of tenders where the companies are bidding against each other / total awarded tenders.

81 See below for further detail on the bidding data at regional level.

82 This happened once over the past five years, in 2019, for a conventional project in 2019 (Form CO, Annex 4).

83 Questionnaire Q3 to customers – Catenaries and overhead contact lines (question E.6).

84 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question E.3).

85 This is the only region where the Parties' activities overlap at regional level.

86 Participation rate = number of bids / total awarded tenders.

87 Competition rate = number of tenders where the companies are bidding against each other / total awarded tenders.

88 Even if the relevant market is defined as national in scope, this bidding data shows that the Parties compete closely in the only region where they compete head-to-head (i.e. Wallonia including Brussels).

explains, '[this] *lack of capacity leads to a lack of competition, as suppliers do not compete intensely for tenders when they do not have spare capacity*'.[89] This explains why the number of bidders in each tender tends to be significantly lower than the number of players active on the market.[90]

(65) This is also consistent with the views expressed by competitors in the course of the market investigation.[91] A vast majority of competitors indicated that they do not have sufficient capacity to take over all of the projects carried out by Eiffage and EQOS annually for the installation and maintenance of catenaries and overhead contact lines in Belgium.[92] Likewise, all competitors indicated that their company would not be able to expand due to capacity constraints.[93] As one competitor explained: '*finding qualified employees is the main barrier* [to] *expansion in Belgium today*'.[94] According to another competitor: '*It is very difficult to find personnel for Railway construction*'.[95]

(66) *Seventh*, given these significant capacity constraints and the low number of bidders in each tender, customers do not enjoy significant countervailing buyer power. In any event, the Transaction will significantly lower any possible countervailing buyer power that customers may have by removing one of the four most frequent bidders on the market. This was confirmed by a customer who clarified that '*it does not have significant buying power, as its suppliers / contractors – due to the tight capacity situation – have the power to increase their prices*'.[96]

(67) *Eight*, the significant capacity constraints that exist on the market also make new entry less likely. This is consistent with the views expressed by competitors who all confirmed that they do not expect any new entry for the installation and maintenance of catenaries and overhead contact lines in Belgium in the next three years.[97]

(68) In view of the foregoing, the Commission concludes that the Transaction gives rise to serious doubts as to its compatibility with the internal market and the EEA agreement concerning the market for the installation and maintenance of catenaries and overhead contact lines in Belgium, for long distance and short distance (metropolitan) lines as well as for long distance lines only.

89 Minutes of a call with a customer for the installation and maintenance of catenaries and overhead contact lines in Belgium of 26 June 2024, paragraph 12.

90 See above Table 6.

91 All opinions expressed by competitors participating to the market investigation confirmed that barriers to expansion on the market for the installation and maintenance of catenaries and overhead contact lines in Belgium are high (Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question E.6)).

92 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question E.7).

93 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question E.8).

94 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question E.6.1)

95 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question E.8.1).

96 Minutes of a call with a customer for the installation and maintenance of catenaries and overhead contact lines in Belgium of 26 June 2024, paragraph 13.

97 Questionnaire Q1 to competitors – Catenaries and overhead contact lines (question E.10).

5.3. Electrical engineering services for power lines: installation of high-voltage overhead power lines (France)

(69) Eiffage is active in the installation of high voltage overhead powerlines in France through its subsidiary Eiffage Energie Systèmes – Régions France. EQOS is active on this market through its subsidiaries EQOS Energie Österreich GmbH and EQOS Energie Luxembourg S.à.r.l. The Transaction gives rise to affected markets in France for the installation of high-voltage overhead power lines in Grand Est, Hauts-de-France, Nouvelle Aquitaine, Occitanie, Provence-Alpes-Cote d'Azur ('PACA').[98]

5.3.1. Market shares

(70) The table below provides an overview of the Parties' value market shares[99] for the installation of high-voltage overhead power lines in each of these regions over the past 3 years.

[98] If the relevant market is defined more broadly as encompassing both installation and maintenance services, the Transaction gives rise to affected markets in Hauts-de-France, Nouvelle Aquitaine, Occitanie, Provence-Alpes-Cote d'Azur. However, for each of these markets, the Parties' combined market share would be lower on a broad market encompassing both installation and maintenance services compared to a narrower market limited to installation services only. In this context, the conclusions below concerning narrow regional markets limited to installation services equally apply to a larger market including both installation and maintenance services (see Form CO, Annex 7).

[99] Since the market for the installation of high-voltage overhead power lines refers to services rather than products, the Parties were only able to provide value market share estimates (Form CO, fn 120). The Parties were unable to provide estimates of their competitors' market shares as they have no visibility on the methodology customers follow to allocate projects on a regional basis and there is no publicly available data on such allocation (Form CO, paragraph 464).

Table 11 – Installation of high-voltage overhead power lines: value market shares (2023)

Region	Party	Sales (m €)	Market share (%)
France	Eiffage	[...]	[10-20]%
	Eqos	[...]	[0-5]%
	Combined	[...]	***[10-20]%***
	Total	[...]	100%
Grand Est	Eiffage	[...]	[10-20]%
	Eqos	[...]	[5-10]%
	Combined	[...]	***[20-30]%***
	Total	[...]	100%
Hauts de France	Eiffage	[...]	[20-30]%
	Eqos	[...]	[0-5]%
	Combined	[...]	***[20-30]%***
	Total	[...]	100%
Nouvelle Aquitaine	Eiffage	[...]	[10-20]%
	Eqos	[...]	[5-10]%
	Combined	[...]	***[20-30]%***
	Total	[...]	100%
Occitanie	Eiffage	[...]	[20-30]%
	Eqos	[...]	[5-10]%
	Combined	[...]	***[20-30]%***
	Total	[...]	100%
PACA	Eiffage	[...]	[20-30]%
	Eqos	[...]	[5-10]%
	Combined	[...]	***[20-30]%***
	Total	[...]	100%

Source: Form CO, Tables 23 – 28 and Form CO, Annex 7

Table 12 – Installation of high-voltage overhead power lines: value market shares (France, 2022)

Region	Party	Sales (m €)	Market share (%)
France	Eiffage	[…]	[10-20]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[10-20]%***
	Total	[…]	100%
Grand Est	Eiffage	[…]	[10-20]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[10-20]%***
	Total	[…]	100%
Hauts de France	Eiffage	[…]	[5-10]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[10-20]%***
	Total	[…]	100%
Nouvelle Aquitaine	Eiffage	[…]	[5-10]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[10-20]%***
	Total	[…]	100%
Occitanie	Eiffage	[…]	[10-20]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[20-30]%***
	Total	[…]	100%
PACA	Eiffage	[…]	[10-20]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[20-30]%***
	Total	[…]	100%

Source: Form CO, Annex 7

Table 13 – Installation of high-voltage overhead power lines: value market shares (France, 2021)

Region	Party	Sales (m €)	Market share (%)
France	Eiffage	[…]	[10-20]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[10-20]%***
	Total	[…]	100%
Grand Est	Eiffage	[…]	[10-20]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[20-30]%***
	Total	[…]	100%
Hauts de France	Eiffage	[…]	[10-20]%
	Eqos	[…]	[5-10]%
	Combined	[…]	***[20-30]%***
	Total	[…]	100%
Nouvelle Aquitaine	Eiffage	[…]	[5-10]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[5-10]%***
	Total	[…]	100%
Occitanie	Eiffage	[…]	[5-10]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[10-20]%***
	Total	[…]	100%
PACA	Eiffage	[…]	[10-20]%
	Eqos	[…]	[0-5]%
	Combined	[…]	***[10-20]%***
	Total	[…]	100%

Source: Form CO, Annex 7

5.3.2. Commission's assessment

(71) As shown above, the Parties' combined share remained below [20-30]% on all of these markets in each of the past three years. Although the Notifying Party was unable to provide market share estimates of its competitors, the market investigation confirmed that the new entity will continue to face a number of competitors[100] including for instance: Bouygues, TSO, Spie, Sobeca, Vinci (Omexom), Helcom, Ineo, Lebag.[101] Given the number of credible alternatives available on the market, one customer stressed that '[w]*hen two companies merge,* [it] *can take this point into account when deciding the number of suppliers to select for the next framework agreement*'.[102]

(72) Among the suppliers currently active on this market, the market investigation also confirmed that Eiffage and EQOS are not particularly close competitors. As one competitor explained: '*Eqos is rather a small player in this field in France*'[103] and '*EIFFAGE addresses more significant projects in terms of complexity, size and numbers*'.[104] According to another competitor: '*Eiffage est beaucoup plus présent que Eqos*'.[105] Likewise, according to a third competitor: '*Eiffage* [Energie Systèmes] *has a stronger position in France thanks to its historical presence than Eqos. This rapprochement* [sic.] *will not be a game changer*'.[106] Overall, these results are also consistent with the absence of concerns expressed by customers in the course of the market investigation.[107]

(73) In view of the foregoing, it can be concluded that the Transaction does not give rise to serious doubts as to its compatibility with the internal market and the EEA agreement with respect to the market for the installation of high voltage overhead power lines in France.

6. PROPOSED REMEDIES

(74) The Commission considers that the Transaction gives rise to serious doubts as to its compatibility with the internal market and the functioning of EEA agreement concerning the market for the installation and maintenance of catenaries and overhead contact lines in Belgium, for long distance and metropolitan lines, as well as for long distance lines only.

6.1. Framework for the assessment of the commitments

(75) Where, as in this case, a notified concentration raises serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement, the parties may modify the notified concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having it declared compatible with the internal market pursuant to Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

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100 Questionnaire Q4 to customers – Power lines (question E.2)
101 Questionnaire Q2 to competitors – Power lines (question E.1).
102 Questionnaire Q4 to customers – Power lines (question E.13.1)
103 Questionnaire Q2 to competitors – Power lines (question E.11.1).
104 Questionnaire Q2 to competitors – Power lines (question E.2).
105 Questionnaire Q2 to competitors – Power lines (question E.2).
106 Questionnaire Q2 to competitors – Power lines (question E.2).
107 Questionnaire Q4 to customers – Power lines.

(76) As set out in the Commission Notice on Remedies[108], commitments have to eliminate the Commission's competition concerns entirely and they have to be comprehensive and effective from all points of view. In Phase I, commitments offered by the parties can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward, and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation.

(77) In assessing whether or not the commitments proposed by the parties would maintain effective competition, the Commission considers all relevant factors, including inter alia the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the Commission has identified serious doubts as to the compatibility of the notified concentration with the internal market, including the position of the Parties and other participants on the market.[109]

(78) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.[110] The Commission must determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market.[111]

(79) As regards the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard. Divestiture commitments are often the most effective way to eliminate competition concerns.[112] The intended effects of a divestiture will only be achieved if and once the business to divest is transferred to a suitable purchaser.[113] The potential of a business to attract a suitable purchaser is an important element of the Commission's assessment of the appropriateness of the proposed commitments.[114]

(80) In order to ensure that the business is divested to a suitable purchaser, the commitments have to include general (and sometimes case-specific) purchaser criteria.[115] This will allow the Commission to conclude that the divestiture of the business to a specific purchaser will likely remove the competition concerns identified.

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108 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01), (the "Commission Notice on Remedies"), paragraph 9.

109 Commission Notice on Remedies, paragraph 12.

110 Commission Notice on Remedies, paragraph 9.

111 Commission Notice on Remedies, paragraph 10.

112 Commission Notice on Remedies, paragraph 15.

113 Commission Notice on Remedies, paragraph 46.

114 Commission Notice on Remedies, paragraph 47.

115 Commission Notice on Remedies, paragraph 49.

6.2. Commitments submitted by the Parties

6.2.1. Initial Commitments

(81) In order to render the concentration compatible with the internal market and the functioning of the EEA agreement, the Parties offered to modify the Transaction by submitting commitments. On 24 September 2024, the Notifying Party submitted a first set of remedies ("Initial Commitments").

(82) As per the Initial Commitments[116] the Parties proposed to divest EQOS Energie Belgium SA ("EQOS Belgium") which is a standalone business and a separate legal entity, which is a subsidiary of EQOS Deutschland ("Divestment Business"). EQOS Belgium carries out about [70-80]% of its activity in catenaries and overhead contact lines contracts (long-distance only) and [20-30]% in tracks contracts.

(83) The Divestment Business, includes all assets and staff that contribute to the current operation or are necessary to ensure its viability and competitiveness, in particular:

(a) all tangible and intangible assets (including intellectual property rights);

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business;

(d) the personnel included in Table 2 of Schedule 1 to the Commitments ("the Personnel"); including (i) the key personnel, notably EQOS Belgium's CEO, CFO, COO, […]; and (ii) the employees with operational functions […].

(84) The Divestment Business also includes the benefit, for a transitional period of up to […] after closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which EQOS Deutschland or the undertakings controlled by the Parties (the "Affiliated Undertakings") supply products or services to the Divestment Business, unless otherwise agreed with the purchaser.

(85) In addition, the Parties undertake to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all […] to remain with the Divestment Business, and not to solicit or move any Personnel to the Parties' remaining businesses.

(86) The Parties have further entered into related commitments, inter alia regarding the separation of the Divested Business from its retained businesses, the preservation of the viability, marketability and competitiveness of the divested businesses, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

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116 The general description below appears both in the Initial and Final Commitments. The amendments made in the Final Commitments are explained in detail in Section 6.2.3.

6.2.2. Results of the market test of the Initial Commitments

(87) The Commission market tested the Initial Commitments.

(88) The results of the market test indicated that overall, the sale of EQOS Belgium to a suitable purchaser would in principle be sufficient to remove the competition concerns raised by the Transaction. Indeed, the vast majority of both competitors and customers that took a position indicated that the Initial Commitments would remove the competition concerns in respect of the Belgian market for installation and maintenance of catenaries and overhead contact lines.[117]

(89) Respondents to the market test, however, identified some aspects that should be added to the Initial Commitments, which can be summarized as follows:

(90) First, the market test results stressed the importance of IT managers, design engineers, warehouse managers and 'employees in charge of planning' in order to run the Divestment Business. [118]

(91) Second, the results of the market test confirmed the shortage of qualified personnel and […] for the viability of the Divestment Business suggesting a need to extend the non-solicitation clause […]. [119]

(92) Third, the results of the market test also probed whether the purchaser criteria of the Initial Commitments were sufficient (stipulating that the purchaser shall have 'proven expertise in the infrastructure sector') or further purchaser criteria should be included. Given the technical nature of the activities carried out by the divestment business, market participants expressed the need for the purchaser to have proven expertise specifically in the 'railway infrastructure sector'. [120]

(93) Fourth, respondents largely confirmed the need […] insisting that qualified personnel on the ground is key to ensure business continuity. [121]

6.2.3. Final Commitments

(94) In view of the results of the market test and following the feedback provided by the Commission, the Parties submitted revised commitments and a revised Form RM, on 14 October 2024.

117 Replies to Questionnaire on commitments offered by Eiffage, question C.1.
118 Replies to Questionnaire on commitments offered by Eiffage, questions D.4. and G.2.1.
119 Replies to Questionnaire on commitments offered by Eiffage, question D.4.
120 Replies to Questionnaire on commitments offered by Eiffage, question D.5.1.
121 Replies to Questionnaire on commitments offered by Eiffage, questions G.2 and G.2.1.

(95) In order to address the issues raised during the market test, the Parties amended the Initial Commitments to:

i. Extend the application of the non-solicitation clause to […], in addition to Key Personnel for a period of […] after Closing.

ii. Provide for a retention scheme for the […].

iii. Indemnify the Divestment Business or the Purchaser […], as defined in paragraph (105) below.

(96) The Parties consider that the Final Commitments would eliminate any serious doubts which may be identified by the Commission in relation to the installation and maintenance of catenaries and overhead contact lines in Belgium. In particular, the Parties are of the view that the Final Commitments fully set off the addition of market shares and capacity in relation to catenaries and overhead contact lines installation and maintenance in Belgium through the Transaction, as they would effectively remove the overlap between the Parties for this activity in Belgium.

7. ASSESSMENT OF THE PROPOSED REMEDIES

7.1. Suitability of the Final Commitments to remove serious doubts

(97) EQOS Belgium is a standalone business and a separate legal entity, which is a subsidiary of EQOS Deutschland. EQOS Belgium is the only company of the EQOS group which is active in the installation and maintenance of catenaries and overhead contact lines for long distance lines in Belgium. EQOS Belgium carries out about [70-80]% of its activity in catenaries and overhead contact lines contracts (long-distance only) and [20-30]% in tracks contracts. EQOS Belgium carries out its catenary and overhead contact lines and track projects autonomously. Its divestiture therefore constitutes a straightforward and clear-cut structural remedy generally suitable to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation.

(98) Through the divestiture of the Divestment Business, the Commitments will remove the entire overlap resulting from the Transaction in relation to the Parties' activities on the market for the installation and maintenance of catenaries and overhead contact lines for long distance lines in Belgium.

(99) The Commission considers that the Final Commitments of 14 October 2024 are suitable to entirely remove the competition concerns raised by the Transaction.

7.2. Viability and competitiveness of the Divestment Business

(100) The Divestment Business is profitable, with a turnover of EUR […] million, and a Profit After Taxes of EUR […] million in 2023.The Divestment business features a healthy EBITDA margin of […]% (EBIT margin of […]%).

(101) The market test has confirmed the viability and competitiveness of EQOS Belgium as all opinions expressed by the market test respondents that replied in

this regard confirmed that the scale and scope of the Divestment Business is sufficient to ensure its immediate and continued viability and competitiveness[122].

(102) More specifically, the market test results confirmed that the Divestment Business includes all the key installation equipment[123], key qualifications, licenses and permits[124] needed to operate viably and competitively and that would allow a suitable purchaser to compete effectively and on a lasting basis for catenary and overhead contact line installation and maintenance projects in Belgium.

(103) In addition, the extension of non-solicit clause to […] added in the Final Commitments will ensure that the Divestment Business will keep the adequate number of qualified personnel to participate in upcoming tender procedures and bid for future projects.

(104) Moreover, the improved retention scheme […].

(105) Finally, the Divestment Business, as part of the Colas Rail group,[125] was […], involved in the tramway de Liège PPP ('Tram de Liège Project'). […].

(106) Based on the results of the market test and following the Notifying Party's amendments in the Final Commitments, the Commission considers that EQOS Belgium is a viable and competitive business.

7.3. Purchaser criteria

(107) The Initial Commitments contain the standard requirements that the purchaser (i) be independent from the Parties, (ii) have the financial resources, proven expertise (qualified as "proven expertise in infrastructure") and incentive to maintain and develop the divestment business as a viable and active competitive force, and (iii) be unlikely to create competition concerns.[126]

(108) As described at paragraph (92) above, the Commission's market test indicated that criterion (ii) was insufficient.

(109) In order to address those concerns, the Parties amended the Initial Commitments to specify the purchaser criteria requesting proven expertise in railway infrastructure specifically.

(110) Consequently, the Commission considers that, as provided in the Final Commitments, the suitable purchaser will need to have proven expertise in railway infrastructure as well as an incentive to maintain and develop EQOS Belgium as a viable and active competitive force in competition with the Parties and other competitors.

(111) Finally, the Notifying Party already received several non-binding offers in addition to a binding offer with limited condition precedent from a potential

122 Replies to Questionnaire on commitments offered by Eiffage, questions D.1 and D.2.

123 Replies to Questionnaire on commitments offered by Eiffage, questions D.3

124 Replies to Questionnaire on commitments offered by Eiffage, questions D.6

125 The Colas Rail group consists of the business unit of Bouygues S.A., active in the provision of electrical engineering services. In Belgium, the Colas Rail group was active through Colas Rail Belgium. After its divestment in 2022, Colas Rail Belgium became EQOS Belgium.

126 Final Commitments submitted the 14 October 2024., paragraph 24

purchaser confirming the interest of the market for the acquisition of the Divestment Business.

7.4. Conclusion

(112) For the reasons outlined above, the Final Commitments entered into by the Parties are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market and the functioning of the EEA agreement regarding the market for the installation and maintenance of catenaries and overhead contact lines in Belgium, for long distance and short distance (metropolitan) lines as well as for long distance lines only. The Commission, therefore, concludes that, subject to full compliance with the Final Commitments given by the Parties, the Transaction would not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement.

8. CONDITIONS AND OBLIGATIONS

(113) Pursuant to the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(114) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(115) In accordance with the basic distinction described in paragraph (114) as regards conditions and obligations, this Decision should be made conditional, on the one hand, on the full compliance by the Parties with Section B of the Final Commitments[127] (including the Schedule and exhibits) submitted by the Parties on 14 October 2024. All other Sections of the Final Commitments should be obligations within the meaning of Article 6(2) of the Merger Regulation. The full text of the Commitments is attached as Annex to this Decision and forms an integral part thereof.

9. CONCLUSION

(116) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in

[127] Attached to this decision as Annex.

conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

CASE M.11577 – EIFFAGE / EQOS

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Eiffage Énergie Systèmes – Participations SAS (the "***Notifying Party***", "***Eiffage Énergie Systèmes***") and EQOS Energie Deutschland GmbH ("***EQOS Deutschland***", together with Eiffage Énergie Systèmes, the "***Parties***"; each individually a "***Party***"), hereby enter into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition of EQOS Deutschland (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

10. DEFINITIONS

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in 11, paragraph 5(a), (b) and (c) and described more in detail in the Schedule.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of […] months from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses, as defined in 11 and in the Schedule, which the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Eiffage Énergie Systèmes and who has/have received from Eiffage Énergie Systèmes the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

Eiffage Énergie Systèmes: Eiffage Énergie Systèmes – Participations SAS, incorporated under the laws of France, with its registered office at 3-7 Place de l'Europe, 78140 Vélizy-Villacoublay, France, and registered with the commercial and companies register of Versailles under number 492 847 843.

EQOS Deutschland: EQOS Energie Deutschland GmbH, incorporated under the laws of Germany, with its registered office at Wolfentalstraße 29, 88400 Biberach an der Riß, Germany, and registered with the commercial register of the local court (Amtsgericht) of Ulm under number HRB 641447.

EQOS Belgium or EBE: EQOS Energie Belgium SA, incorporated under the laws of Belgium, with its registered office at 3, Rue des Ateliers B-7850 Enghien Belgium, and registered under number 0460.627.462 (Register of Legal Entities Hainaut, section Tournai).

First Divestiture Period: the period of […] months from the Effective Date.

Hold Separate Manager: the person appointed by the Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Linesmen: employees with operational functions within EQOS Belgium directly involved in working on catenaries and OCLs, and which are notably involved in setting up lines and poles. Linesmen do not include employees in the tracks business or in administrative/support functions within EQOS Belgium. Linesmen include […]. To the extent an employee would fall within the definitions of both Linesman and Key Personnel, the latter categorization shall prevail.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Eiffage Énergie Systèmes, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and the undertaking that is the target of the concentration ("***Eiffage Énergie Systèmes***" and "***EQOS Deutschland***" respectively).

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in 13.

Purchaser Criteria: the criteria laid down in paragraph 24 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] months from the end of the First Divestiture Period.

11. THE COMMITMENT TO DIVEST AND THE DIVESTMENT BUSINESS

Commitment to divest

2. In order to maintain effective competition, the Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 25 of these Commitments. To carry out the divestiture, the Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Parties have not entered into such an agreement at the end of the First Divestiture Period, the Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 37 in the Trustee Divestiture Period.

3. The Parties shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, the Parties or the Divestiture Trustee have/has entered into a final binding sale and purchase agreement and

the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 25; and

(b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 51 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of EQOS Belgium, which carries out about [70-80]% of its activity in catenaries and overhead contact lines ("***OCL***") contracts (long-distance only) and [20-30]% in tracks contracts. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

(a) all tangible and intangible assets (including intellectual property rights);

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) the Personnel.

6. In addition, the Divestment Business includes the benefit, for a transitional period of up to […] years after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which EQOS Deutschland or its Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply

arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the catenary, OCLs and tracks operations.

12. **RELATED COMMITMENTS**

Preservation of viability, marketability and competitiveness

7. From the Effective Date until Closing, the Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Parties undertake:

   (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business; and

   (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

   (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel and Linesmen to remain with the Divestment Business, and not to solicit or move any Personnel, including Key Personnel and Linesmen, to the Parties' remaining business. […].

Retention scheme

8. […].

9. […].

10. […].

11. […].

12. […].

Tram de Liège

13. […].

14. The Parties now undertake to indemnify the Divestment Business or the Purchaser for any disbursement that the Divestment Business […].

15. […].

Hold-separate obligations

16. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses they are retaining and to ensure that unless explicitly permitted under these Commitments: (*i*) management and staff of the businesses retained by the Parties have no involvement in the Divestment Business; (*ii*) the Key Personnel and Personnel of the Divestment Business have no involvement in any businesses retained by the Parties and do not report to any individual outside the Divestment Business.

17. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses which the Parties are retaining. Immediately after the adoption of the Decision, the Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8 of these Commitments. The Commission may, after having heard the Parties, require the Parties to replace the Hold Separate Manager.

18. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise the Parties' rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for their rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the Parties shall resign as member(s) of the boards or shall cause such member(s) of the boards to resign.

Ring-fencing

19. The Parties shall implement, or procure to implement, all necessary measures to ensure that they do not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. This includes measures vis-à-vis the Parties' appointees on the

supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Parties is required by law.

Non-solicitation clause

20. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel […] transferred with the Divestment Business for a period of […] years after Closing.

Due diligence

21. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divestment Business;

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

22. The Parties shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

23. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

13. THE PURCHASER

24. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

(a) The Purchaser shall be independent of and unconnected to the Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

(b) The Purchaser shall have the financial resources, proven expertise in the railway infrastructure sector, and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

(c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

25. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Parties have reached an agreement with a purchaser, the Parties shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

14. TRUSTEE

Appointment procedure

26. Eiffage Énergie Systèmes shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.

27. If the Parties have not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Parties at that time or

thereafter, Eiffage Énergie Systèmes shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

28. The Trustee shall:

(a) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;

(b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(c) neither have nor become exposed to a Conflict of Interest.

29. The Trustee shall be remunerated by Eiffage Énergie Systèmes in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Eiffage Énergie Systèmes

30. No later than two weeks after the Effective Date, Eiffage Énergie Systèmes shall submit the name or names of one or more natural or legal persons whom Eiffage Énergie Systèmes proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Eiffage Énergie Systèmes shall submit a list of one or more persons whom Eiffage Énergie Systèmes proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee(s) fulfil the requirements set out in paragraph 28 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the proposed Trustee(s) to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the proposed Trustee(s) intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee(s) is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

31. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the proposed Trustee(s) to fulfil its obligations. If only one name is approved, Eiffage Énergie Systèmes shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Eiffage Énergie Systèmes shall be free to choose the proposed Trustee(s) to be appointed from among the names approved. The proposed Trustee(s) shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Eiffage Énergie Systèmes

32. If all the proposed Trustees are rejected, Eiffage Énergie Systèmes shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 26 and 31 of these Commitments.

Trustee nominated by the Commission

33. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Eiffage Énergie Systèmes shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Functions of the Trustee

34. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Eiffage Énergie Systèmes, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

35. The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(b) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the businesses retained by the Parties, in accordance with paragraphs 7 and 16 of these Commitments;

(ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 17 of these Commitments;

(iii) with respect to Confidential Information:

- determine all necessary measures to ensure that the Parties does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,

- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,

- make sure that any Confidential Information relating to the Divestment Business obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties and

- decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law;

(iv) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties or Affiliated Undertakings;

(c) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(d) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(i) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(ii) potential purchasers are granted reasonable access to the Personnel;

(e) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(f) provide to the Commission, sending the Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(g) promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments;

(h) within one week after receipt of the documented proposal referred to in paragraph 25 of these Commitments, submit to the Commission, sending the Parties a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

(i) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

36. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

37. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 24 and 25 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee

may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

38. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

Duties and obligations of the Parties

39. The Parties shall provide and shall cause their advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

40. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause their advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

41. The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.

42. Eiffage Énergie Systèmes shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Eiffage Énergie Systèmes for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

43. At the expense of Eiffage Énergie Systèmes, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Eiffage Énergie Systèmes' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Eiffage Énergie Systèmes refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Eiffage Énergie Systèmes. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 42 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Eiffage Énergie Systèmes during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

44. The Parties agree that the Commission may share Confidential Information proprietary to the Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

45. The Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

46. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

Replacement, discharge and reappointment of the Trustee

47. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and Eiffage Énergie Systèmes, require Eiffage Énergie Systèmes to replace the Trustee; or

(b) Eiffage Énergie Systèmes may, with the prior approval of the Commission, replace the Trustee.

48. If the Trustee is removed according to paragraph 47 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 26-33 of these Commitments.

49. Unless removed according to paragraph 47 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

15. THE REVIEW CLAUSE

50. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Parties or, in appropriate cases, on its own initiative. Where the Parties request an extension of a time period, they shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

51. The Commission may further, in response to a reasoned request from the Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

16. ENTRY INTO FORCE

52. The Commitments shall take effect upon the date of adoption of the Decision.

[…]

[signed]

Duly authorised for and on behalf of Eiffage Énergie Systèmes

[…]

[signed]

Duly authorised for and on behalf of EQOS Deutschland

[…]

[signed]

Duly authorised for and on behalf of EQOS Deutschland

SCHEDULE 1
EQOS BELGIUM

1. The Divestment Business as operated to date has the following legal and functional structure: EQOS Belgium is a legal subsidiary of EQOS Deutschland (controlled at 100%). An organisational chart can be found below. The Divestment Business consists of EQOS Belgium which carries out about [70-80]% of its activity in catenaries and OCL contracts (long-distance only) and [20-30]% in tracks contracts.

2. In accordance with paragraph 5 of these Commitments, the Divestment Business includes, but is not limited to:

   (a) the following main tangible assets:

   - Real estate: the registered office building is situated at 3, Rue des Ateliers B-7850 Enghien, Belgium, which is owned by EQOS Belgium. The site includes, a warehouse, a storage space, IT installations and office space available for all of EQOS Belgium, for both the catenary and OCL and the track activities (a total site area of […] m²). EQOS Belgium also installs temporary offices at the various project sites which will be included in the Divestment Business.
   - All machinery, which includes:
     - trains and wagons: (*i*) […] tilting trains, (*ii*) […] concrete trains and (*iii*) […] wiring wagons;
     - […]rail-road shovels (used for foundations, mast and boom installations);
     - […] rail-road platforms;
     - […] cranes; and
     - […] traction unit.

   (b) the following main intangible assets:

   - Tailor made programmes such as […] which ensures correct preparation and logistical follow-up of the projects[1].

   (c) the following main licences, permits and authorisations:

   - H, class 8 qualification (railworks);

[1] […].

- H1, class 6 qualification (welding rails);
- H2, class 8 qualification (catenary works);
- ISO 9001:2015 certification (quality standard);
- VCA ** certification (security standard);
- P1, class 5 (electrical installations and buildings);
- P2, class 7 (electrical and electromechanical installations);
- P3, class 5 (OCLs); and
- S1, class 5 (public telephone and telegraph equipment and data management).

(d) the following main contracts, agreements, leases, commitments and understandings:

Table 14 – EQOS Belgium's on-going contracts and future revenues

Type of contract	Number	Total contract value (EUR)	Future revenues (EUR)[2]
All on-going long-distance catenary contracts	[…]	[…]	[…]
All on going tracks contracts	[…]	[…]	[…]
On going application process	[…]	[…]	[…]
- […]	[…]	[…]	[…]
- […]	[…]	[…]	[…]
- […]	[…]	[…]	[…]

(e) all customer, credit and other records, including:

- […]; and
- […].

[2] As of June 2024.

(f) the following Personnel:

Table 15 – Function and number of employees in EQOS Belgium, as of 8 October 2024

	Function	Department	Number
Support functions	[…]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	CFO	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…][3]	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…][4]	Catenary/Tracks	[…]
Operational functions	COO	Catenary/Tracks	[…]
	[…]	Catenary/Tracks	[…]
	[…]	Catenary	[…]
	[…]	Catenary	[…]
	[…]	Catenary	[…]
	[…]	Catenary	[…]
	[…]	Catenary	[…]
	[…]	Catenary	[…]
	[…]	Catenary	[…]
	[…]	Tracks	[…]
	[…]	Catenary/Tracks	[…]
		Catenary	[…]
		Tracks	[…]
TOTAL			[…]

[3] In charge of following up proper management of plant and equipment (dispatching, usage and maintenance).

[4] In charge of managing hardware and software, as well as relationship with headquarters' IT Team.

(g) the following Key Personnel:

[…];

(h) the arrangements for the supply with the following products or services by EQOS Deutschland or Affiliated Undertakings for a transitional period of up to […] years after Closing:

- Provision of treasury services ([…]);
- Provision of finance services ([…]) ([…]);
- Provision of IT services ([…]);
- Provision of HR services ([…]);
- Procurement of framework agreements ([…]), to the extent requested by third-parties;
- Provision of HSEQ services.

3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

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