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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Bouygues S.A.
32, avenue Hoche
75008 Paris
France

Subject: **Case M.10575 – BOUYGUES / EQUANS**
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 30 May 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Bouygues S.A. ("Bouygues", or the "Notifying Party", France) will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Equans S.A.S. ("Equans", France) and its subsidiaries by way of purchase of shares (the "Transaction").[3] Bouygues and Equans are hereinafter designated 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 Publication in the Official Journal of the European Union No C 223, 8.6.2022, p. 52.

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1. THE PARTIES

(2) Bouygues is the French holding company of a diversified industrial group active in the construction, transport infrastructure, multi-technical services, real estate development and media & telecommunications sectors. As regards the multi-technical services sector, Bouygues is active mainly through Bouygues Energies & Services, a wholly owned subsidiary of Bouygues Construction. Bouygues Energies & Services' activities focus on the provision of electrical engineering services, in particular: (i) network infrastructure (energy and digital networks), (ii) facility management and (iii) electrical, mechanical and heat, ventilation and air-conditioning ("HVAC") engineering services. Bouygues also provides electrical engineering services through Colas Rail, in particular railway electrification (installation and maintenance of catenaries and overhead contact lines) and railway signalling. Bouygues Construction Services Nucléaires provides services to the civil nuclear industry.

(3) Equans is a global company active in the multi-technical services sector. Equans' activities focus on (i) electrical, mechanical and HVAC engineering, (ii) refrigeration solutions, (iii) facility management, and (iv) digitization and Information and Communication Technology ("ICT"). Equans focuses on the energy, digital and industry transitions. Equans addresses the private and public sector industry (including the civil nuclear sector) and infrastructure companies. Equans provides electrical, mechanical, HVAC and refrigeration engineering services, including integrated facility management services, through the following main subsidiaries: Ineo (electrical engineering), Pierre Guérin (mechanical engineering) and Axima (HVAC and refrigeration). Equans also provides railway electrification services (installation and maintenance of catenaries and overhead contact lines) through Powerlines, Ineo SCLE Ferroviaire and Fabricom.

2. THE TRANSACTION

(4) The Transaction consists of the acquisition of sole control by Bouygues over Equans through the acquisition by Bouygues of 100% of the share capital and voting rights of Equans from its current shareholders Engie S.A. and Engie Energy Services International S.A., both part of the Engie Group (France). The Transaction will be implemented by way of a share purchase agreement that was signed on 12 May 2022. It follows that the Transaction is 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 (Bouygues: EUR 37 588.5 million, Equans: EUR [worldwide turnover]). Each of them has a Union-wide turnover in excess of EUR 250 million (Bouygues: EUR [EU turnover], Equans: EUR [EU turnover]) and only Bouygues achieved more than two-thirds of its aggregate EU-wide turnover within one and the same Member State (i.e. France). The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Introduction

(6) The Parties are active in the provision of multi-technical and engineering services mainly in France, as well as in a number of other Member States. For engineering services, the main areas of overlap between the Parties concern electrical engineering services and, to a limited extent, HVAC engineering services.[4] The Parties' electrical engineering services primarily consist of installation and maintenance services for the infrastructure sector and, to a lesser extent, the industrial sector in France. As part of their electrical engineering services, the Parties also provide railway electrification services, (i.e. installation and maintenance of catenaries and overhead contact lines) in several Member States. Although railway electrification services represent only a small portion of the Parties' global activities, they give rise to affected markets in several Member States and, hence, have been a focus of the Commission's investigation.

(7) First, as regards railway electrification (Section 4.2), the Parties overlap in the installation and maintenance of catenaries and overhead contact lines in Austria, Belgium, France, Luxembourg and the Netherlands (Section 4.2.1), as well as in the manufacture and supply of catenaries equipment in the EEA (Section 4.2.2).

(8) In this respect, the Parties are thus active at different levels of the value chain for catenaries and overhead contact lines, i.e. upstream as regards the manufacturing and supply of catenary equipment and downstream as regards the installation and maintenance of catenaries and overhead contact lines.[5]

(9) Second, the Parties' activities further overlap in France in other electrical engineering services (Section 4.3), including for telecommunication networks (Section 4.3.1.3.1), substations (Section 4.3.1.3.2), power lines (Section 4.3.1.3.2) and public lighting (Section 4.3.1.3.4), as well as for the civil nuclear industry (Section 4.3.1.3.5).

(10) With regard to the telecommunication networks sector specifically, the Parties are active also at different levels of the value chain, i.e., in addition to their upstream activities for electrical engineering services for (fixed) telecommunication networks, they also operate downstream for the deployment and operation of optical fibre networks in low density public-initiative areas (Section 4.4).

(11) Third, the Parties' activities overlap as regards HVAC engineering services, primarily in the civil nuclear industry (Section 4.5).

4.2. Railway electrification

(12) Railway contact lines are transmission systems for supplying trains with electric current via current collectors. Catenaries and overhead contact lines are a specific

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4 The Parties overlap to a limited extent in many other markets, but these are not affected markets and will not therefore be addressed in this decision.

5 Depending on the railway infrastructure operators' purchasing methods for catenary equipment in each case, the markets for manufacture and supply of catenary equipment, and for installation and maintenance of catenaries and overhead contact lines, can be viewed either as vertically linked or as closely related. See paragraphs (12) *et seq.*

type of railway contact lines. An overhead contact line is an 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.

(13) A catenary and overhead contact line system consists of various components, such as supporting steel frames, cantilevers, registration arms and the actual wires. Such components are referred to as catenary equipment.[6]

(14) Installation and maintenance services for catenaries and overhead contact lines are typically sourced through tenders by national and urban railway infrastructure operators (Section 4.2.1).[7]

(15) Depending on the railway infrastructure operator, the purchase of catenary equipment (Section 4.2.2) can be either carried out through separate tenders by the railway infrastructure operator itself, or it can be outsourced to the provider of the installation and maintenance services who, in turn, can procure these products externally or, where the provider is vertically integrated, it can provide them as a one-stop-shop.[8]

4.2.1. Installation and maintenance of catenaries and overhead contact lines

4.2.1.1. Product market

4.2.1.1.1. Commission's precedents

(16) In previous decisions, the Commission identified a market for railway contact line engineering and defined contact lines as "*transmission systems for supplying trains with electric current via current collectors*".[9] According to the Commission, "*in most cases the current is supplied by overhead lines suspended above the locomotives. In the case of underground railways and to some extent overhead railways as well, it is supplied by a live third rail*".[10]

(17) The Commission has also considered separate product markets according to the type of system (catenary and overhead contact lines versus third rail) and according to the type of customer (long-distance train versus metropolitan[11] train and tramway) but ultimately left the exact definition of the market open.[12]

4.2.1.1.2. Notifying Party's views

(18) The Notifying Party considers that there is a single market for the installation and maintenance of catenaries and overhead contact lines and that there is no need for further delineation by type of customer (i.e. long-distance vs metropolitan rail) or by type of system (i.e. catenaries and overhead contact lines vs. third rail

6 Catenary equipment is further discussed in Section 4.3.
7 Form CO, paragraph 641.
8 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.2. and replies to eQ2 to competitors, question B.A.2.
9 COMP/M.3653 Siemens/VA Tech, para. 165.
10 COMP/M.3653 Siemens/VA Tech, para. 165.
11 In the remainder of this Decision, the term "metropolitan rail" and its variations are used to indicate all non-long-distance railways (i.e. tramways, metro etc.).
12 COMP/M.9483 ENGIE /Powerlines, op. cit., para. 10-14.

systems).[13] The Notifying Party submits that service providers involved in the installation and maintenance of catenaries and overhead contact lines for long-distance rail can easily switch to metropolitan rail.[14]

(19) The Notifying Party specifies that it does not consider that the installation and maintenance of catenaries and overhead contact lines for high-speed lines constitute a separate sub segment within the segment for long-distance rail and even less a separate relevant market.

(20) The Notifying Party further submits that a distinction between catenaries and overhead contact lines on the one hand, and third rail systems on the other hand is not warranted, given that third rail systems are used to a marginal extent in EU countries.[15]

4.2.1.1.3. Commission's assessment

(21) The results of the market investigation indicated that with respect to catenaries and overhead contact lines, installation and maintenance are within the same product market. A significant majority of both customers and competitors[16] stated that installers of catenaries and overhead contact lines are also able to provide maintenance services, and vice versa.[17] Installation and maintenance services are also typically sourced by the same customers, although some railway infrastructure operators carry out the maintenance of their infrastructure in-house.[18]

(22) Furthermore, the results of the market investigation indicated that a separation by type of system, between catenaries and overhead contact lines, on the one hand, and third rail systems, on the other hand, is warranted. A majority of both customers and competitors submitted that installation of third rail systems is not offered by installers of catenaries and overhead contact lines. This is because know-how and required equipment differs, and third-lines are carried out by track installers, rather than catenary installers. As one competitor noted, *"[t]here is a big difference in equipment and know-how between laying tracks (track) and placing overhead contact lines installations (catenary). The concerned workforce requires very divers skills."*[19] Furthermore, as third-rail systems are typically used in underground railways[20], while catenaries and overhead contact lines are primarily used in above-ground railways, both systems serve a different purpose and are not sourced together.[21]

(23) The results of the market investigation were, however, inconclusive on whether the market for the installation and maintenance of catenaries and overhead contact lines should be further segmented by type of customer, i.e. between long-distance

13 Form CO, para. 284 *et seq.*
14 *Ibid.*
15 *Ibid.*
16 In this Decision, reference to customers' and competitors' feedback in the Commission's market investigation shall be taken to refer to those expressing a view.
17 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.1.4. and replies to eQ2 to competitors, question B.A.1.4.
18 Minutes of the call with a customer, 18.03.2022; minutes of a call with a customer, 22.04.2022.
19 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.1.1. and replies to eQ2 to competitors, question B.A.1.1.
20 COMP/M.3653 Siemens/VA Tech, Commission decision of 13 July 2005, para. 165.
21 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.1.1.

and metropolitan rail. A majority of customers responded that installers of catenaries and overhead contact lines for long-distance rail can also provide their services for metropolitan rail, and vice versa.[22] However, many respondents explained that while the technical principles applicable to both segments are the same, the long-distance rail segment is more demanding in terms of certifications and the necessary installation equipment, and there might also be different training requirements for the personnel.[23] Furthermore, as long-distance rail is typically operated by the national railway infrastructure operator, while metropolitan rail is typically operated by the urban railway infrastructure operators, customers are not the same for installation and maintenance services in long-distance rail and metropolitan rail.[24]

(24) The Commission has further assessed whether within the potential segment for long-distance rail a further distinction between conventional rail and high-speed rail would be warranted. The results of the market investigation showed that such a distinction is not necessary. The majority of both customers and competitors noted that service providers are able to provide installation and maintenance for both conventional long-distance rail and high-speed rail.[25] Although some respondents pointed to some differences in the installation, most of them also noted that it is the same service providers who are active in the installation and maintenance of catenaries and overhead contact lines for both conventional and high-speed rail and that they serve the same customers. One competitor explained that such differences in the installation exist between all kinds of different types of catenaries (such as catenaries for use under bridges etc.)[26] The Commission therefore does not consider that such differences justify the definition of a separate product market.

(25) In light of the above, the Commission will assess the Transaction on the basis of a market comprising the provision of both installation and maintenance services for catenaries and overhead contact lines, excluding third rail systems, with a particular focus on long-distance rail. Further distinctions within long-distance rail, such as between conventional and high-speed rail do not change the Commission's assessment. As the Parties are not active in the installation and maintenance of third rail systems, this market will not be further assessed.

4.2.1.2. Geographic market

4.2.1.2.1. Commission's precedents

(26) The Commission has previously considered that the market for the installation and maintenance of catenaries and overhead contact lines was national in scope, although it did not exclude that such market could be extend to multiple Member States or even EEA-wide.[27]

22 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.1.2.
23 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.1.2.1.
24 Replies to eQ1 to customers of railway contact lines and catenary equipment, question A.1.
25 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.1.3. and replies to eQ2 to competitors, question B.A.1.3.
26 Replies to eQ2 to competitors of railway contact lines and catenary equipment, question B.A.1.3.1.
27 COMP/M.9483 ENGIE/Powerlines, op. cit., para. 17-19.

4.2.1.2.2. Notifying Party's views

(27) The Notifying Party submits that the geographical scope of the market for the installation and maintenance of catenaries and overhead contact lines should be considered EEA-wide given the increasing harmonisation of standards and regulations across the area. Furthermore, the Parties themselves operate in different countries throughout the EEA, in the same way as their main competitors.[28]

4.2.1.2.3. Commission's assessment

(28) The results of the market investigation clearly indicated that the market for the installation and maintenance of catenaries and overhead contact lines is national in scope. A significant majority of customers submitted that their installation and maintenance providers are based in the same country as themselves.[29] A majority of customers and a significant majority of competitors also submitted that national regulations, certifications and technical standards still differ between EEA countries.[30] As one customer noted, *"[r]ailway specifications are mostly the product of local evolutions and politics to protect national network and companies. Therefore a lot of technical specifications are different."*[31]

(29) The Commission therefore considers the market for the installation and maintenance of catenaries and overhead contact lines, as well as the potential narrower markets relating to long-distance rail and metropolitan-rail, to be national in scope.

4.2.2. Manufacture and supply of catenary equipment

4.2.2.1. Product market

4.2.2.1.1. Commission's precedents

(30) The Commission has previously considered a market for the manufacture and distribution of catenary equipment.[32] The Commission considered a further subdivision of the market between train and tramway equipment, but left the precise market definition open.[33]

4.2.2.1.2. Notifying Party's views

(31) The Notifying Party did not provide any views on the distinction between manufacture and supply of catenary equipment.

4.2.2.1.3. Commission's assessment

(32) The market investigation confirmed the Commission's previous findings with respect to the existence of a separate market for the manufacture and supply of

28 Form CO, para. 295 *et seq.*

29 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.1.

30 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.2. and replies to eQ2 to competitors, question B.B.1.

31 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.2.1.

32 COMP/M.9483 ENGIE/Powerlines, op. cit., para. 13 and 20; COMP/M.5701 Vinci/Cegelec, op. cit., para 36-38.

33 COMP/M.9483 ENGIE/Powerlines, op. cit., para. 20.

catenary equipment. The majority of respondents submitted that customers do not usually source the catenary equipment from the same supplier of the installation and maintenance services.[34] As one customer explained, *"[w]e notice that some big installations companies try to develop themselves by external acquisition of equipment suppliers. Nevertheless, it is not a systematic move."*[35] Another customer noted that the *"[m]aterial will be tendered separately but [Bouygues] is also a supplier of material/catenary equipment"*.[36] It follows that, even if for a given project the catenary equipment will be sourced from the same supplier as the installation and maintenance services, this will typically happen through separate tenders, which supports the existence of separate markets for the manufacture and supply of catenary equipment on the one hand, and the installation and maintenance of catenaries and overhead contact lines on the other hand.

(33) Furthermore, the question of whether a segmentation between catenary equipment for trains and tramways is warranted can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement as regards the manufacture and supply of catenary equipment, irrespective of the precise product market definition.

4.2.2.2. Geographic market

4.2.2.2.1. Commission's precedents

(34) The Commission has previously considered that the market for the manufacture and distribution of catenary equipment could be national, supra-national, EEA wide or even worldwide in scope but ultimately left the exact geographic delineation of the market open.[37]

4.2.2.2.2. Notifying Party's views

(35) The Notifying Party considers that the market for the manufacture and supply of catenary equipment should be considered at least EEA-wide in scope given the increasing harmonisation of standards and regulations across the EEA and the fact that national regulations, technical standards and/or certification processes are rather comparable across the EEA. Although certain specific catenary equipment needs to be certified by the national railway infrastructure operator prior to their distribution on the market, most catenary equipment can and are actually being supplied across countries, as evidenced by the geographical reach of the major catenary equipment manufacturers.[38]

4.2.2.2.3. Commission's assessment

(36) The market investigation confirmed that the market for the manufacture and supply of catenary equipment is at least EEA-wide in scope, primarily based on feedback

34 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.2. and replies to eQ2 to competitors, question B.A.2.

35 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.2.1.

36 *Ibid.*

37 COMP/M.9483 ENGIE/Powerlines, op. cit., para. 27.

38 Form CO, para. 334 *et seq.*

from customers.[39] A majority of customers submitted that national regulations, technical standards and certification processes for the manufacture and distribution of catenary equipment are not different across the EEA.[40] A significant majority of customers further replied that their catenary equipment supplier does not need to be located in the same country as the project for which the equipment is purchased.[41] One customer noted in this regard that *"[s]hipment within EU is quite easy and fast."*[42] A majority of customers further replied that they source their catenary equipment on an EEA-wide, or even worldwide basis.[43]

(37) The Commission therefore will conduct its assessment on the basis of an EEA-wide market for the manufacture and supply of catenary equipment.

4.3. Provision of electrical engineering services

(38) The Parties overlap in the provision of electrical engineering services in the infrastructure and industry sectors in France. Within the infrastructure sector, this includes engineering services in the telecoms sector (such as installing fixed telecoms networks), for power transmission (power lines and substations) and for public lighting. In the industry sector, the Parties overlap in the provision of electrical engineering services in the civil nuclear sector.

4.3.1. Product market

4.3.1.1. Commission's precedents

(39) In previous decisions, the Commission made a distinction between (i) electrical engineering services, (ii) mechanical engineering services, and (iii) HVAC engineering services.[44]

(40) Within each of these activities, the Commission has also considered the existence of separate product markets based on (i) the type of work (installation versus maintenance) and (ii) the type of customers (residential versus non-residential, and within the non-residential segment, between infrastructure, industry, and tertiary).[45]

(41) As regards electrical engineering services, within the infrastructure segment, the Commission previously identified separate markets according to the type of infrastructure, namely (i) telecommunication networks,[46] (ii) electrical

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39 The Commission received very limited feedback from competitors active in the manufacturing and supply of catenary equipment.

40 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.7.

41 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.8.

42 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.8.1.

43 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.6.

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

45 M.10314 – Vinci S.A./Energia y Servicios Dinsa II, para 9.

46 COMP/M.5701 Vinci/Cegelec, para. 22.

substations[47], (iii) power lines[48] and (iv) public lighting (including other electrical urban equipment).[49]

(42) As regards telecommunication networks, the Commission previously considered the possibility to further divide the segment into fixed and mobile networks.[50]

(43) As regards power lines, the Commission previously considered the possibility to further divide the segment according to (a) the type of voltage (between "high", i.e. above 50 000 volts, and medium/low, i.e. below 50 000 volts) and (b) the type of installation (between overhead and underground power lines) ultimately leaving the exact product market definition open.

(44) As regards public lighting, the Commission has previously considered, although ultimately left open, a market for public lighting and other electrical equipment, which includes both "traditional lighting" (e.g. street lighting, traffic lights, illuminating of monuments) and so-called "smart" electrical equipment (e.g. video-surveillance systems).[51]

(45) Within the industry segment, the Commission has previously not defined a separate market for electrical engineering services for the civil nuclear industry.[52]

4.3.1.2. Notifying Party's views

(46) The Notifying Party submits that the market for the provision of electrical engineering services could be divided according to the type of customer (i.e., between residential, infrastructure, industrial and tertiary).[53]

(47) As regards a potential subdivision of the market for the provision of electrical engineering services between installation and maintenance services, the Notifying Party generally argues that such distinction is not necessary given that most operators are capable of performing both types of services. Installation and maintenance services can be contracted together or separately, and often involve the same type of works, the same staff, and the same resources.[54]

(48) As regards a potential subdivision of the infrastructure segment within the electrical engineering services market according to the type of infrastructure involved (i.e., between (i) telecommunication networks, (ii) power lines, (iii) substations and (iv) public lighting), the Notifying Party submits that such distinction is not necessary given that the demand is heterogeneous across and within each type of infrastructure segment. The Notifying Party and its main competitors are generally active on all types of infrastructure.[55]

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47 COMP/M.5701 Vinci/Cegelec, para. 23.

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

49 COMP/M.7137 – EDF/Dalkia en France, paras. 132-139.

50 COMP/M.9728 Altice/Allianz/OMERS/Covage, para. 220 *et seq.*

51 COMP/M.7137 – EDF/Dalkia en France, para. 139.

52 This market was however defined by the French Competition Authority in the context of the acquisition of Steam Power Delta by Snef in 2019, decision n°19-DCC-265 of 26 December 2019.

53 Form CO, para 132 *et seq.*

54 Form CO, para 133.

55 Form CO, para 134.

(49) As regards a potential subdivision of the market for the provision of electrical engineering services for power lines, the Notifying Party considers that it could be relevant to identify a specific market segment for the provision of electrical engineering services for high voltage power lines given that (i) high voltage power lines require specific plant and machinery, heavy equipment, highly trained staff and labour force, and (ii) competitive conditions in France are mostly driven by one customer (RTE) with strong countervailing buyer power.[56]

(50) In the Notifying Party's view, the market for the provision of electrical engineering services for medium- and low-voltage power lines is part of the market for the provision of electrical engineering services and need not be defined separately. These services are tendered both by distribution network operators and local authorities. Furthermore, the Notifying Party considers that, contrary to high-voltage power lines, works on medium- and low-voltage power lines do not require any specific technical knowledge or equipment that would sustain a specific standalone market definition.[57]

(51) The Notifying Party further considers there is no need to subdivide the market between overhead and underground lines: although these services can be tendered separately, they are sourced by the same customers and generally involve the same service providers.[58]

(52) The Notifying Party considers that the market for the provision of public lighting is part of the general market for the provision of electrical engineering services.[59] Nonetheless, the Notifying Party has assessed the effect of the Transaction on the public lighting market separately. The Notifying Party however submits that the market for the installation and maintenance of public lighting should include both traditional and "smart" equipment, without any further delineation.[60]

(53) Finally, with respect to the provision of electrical engineering services for the civil nuclear industry, the Notifying Party explains that, while there are no precedents in the Commission's decision practice, the French Competition Authority ("FCA") has previously defined a separate market for the provision of electrical engineering services for the civil nuclear industry. The FCA further considered a subdivision of such market into installation and maintenance.[61]

4.3.1.3. Commission's assessment

(54) The main area of overlap between the Parties' activities in electrical engineering services[62] falls within the infrastructure sector, which, therefore, was the focus of the market investigation. Within the infrastructure sector, the results of the market investigation indicated that service providers were typically able to provide both

56 Form CO, para. 135.
57 Form CO, para. 135.
58 *Ibid.*
59 Form CO, para 272.
60 Form CO, para 270.
61 Form CO, para. 388; decision n°19-DCC-265 of the FCA.
62 As the Parties' activities do not lead to affected markets in mechanical engineering, mechanical engineering markets are not further assessed in this decision. For HVAC engineering services, the only affected market arises in the industrial sector, more specifically for customers in the civil nuclear sector, see Section 4.5 below.

installation and maintenance services, although a minority of market participants indicated that this depended on the sector.[63] On the other hand a significant majority of customers indicated that they typically used separate contracts for installation and maintenance services, with a few additional customers noting that whether or not they used separate contracts depended on the sector.[64] For the purposes of this decision, the question of whether the electrical engineering services should be segmented between installation and maintenance can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition. The Commission will therefore assess installation and maintenance services separately and also combined.

(55) In line with the Commission's precedents, the results of the market investigation tended to indicate that within the infrastructure sector, there are separate product markets according to the type of customer[65] as explained below. Customers who replied to the market investigation, which for the most part tend to be public bodies, tend to source electrical engineering services for either one or more different infrastructure(s) and purposes.[66]

4.3.1.3.1. Market for the provision of electrical engineering services for telecommunication networks

(56) Customers source electrical engineering services for telecommunications networks for a specific purpose and separately to other electrical engineering services.[67] A majority of customers and competitors indicated that engineering service providers for telecommunication networks could typically provide both fixed and mobile telecommunication network installation and maintenance services.[68] However, a minority of market participants noted that this depended on the particular work carried out, or depended on the particular service provider (e.g. some but not all could work on fixed and mobile services). One customer also noted that as regards installation of fixed telecoms, there were additional complexities involved: "*If the question is limited to electrical installation: the fixed networks installation are more complex than those required for a mobile site (the mobile aggregation equipment or the core network that have high requirements are excluded of this comment). As such an electrical engineering service company in fixed network have the competencies for mobile but the contrary is not obvious. But mobile network or fixed network services globally speaking are much wider than only electrical engineering competencies*…"[69]

(57) For the purposes of this decision, the Commission considers that, within electrical engineering services, there is a separate market for electrical services for

63 Replies to eQ3 to customers of electrical engineering services, question 6.1 and replies to eQ4 to competitors in electrical engineering services, question 6.1.

64 Replies to eQ3 to customers of electrical engineering services, question 6.2.

65 Replies to eQ3 to customers of electrical engineering services, question 6.4 and replies to eQ4 to competitors in electrical engineering services, question 6.3.

66 Replies eQ3 to customers of electrical engineering services, question 2.

67 Replies eQ3 to customers of electrical engineering services, question 2. Minutes of a call with a customer, 16 May 2022. Minutes of a call with a customer, 7 April 2022.

68 Replies to eQ3 to customers of electrical engineering services, question 7 and replies to eQ4 to competitors in electrical engineering services, question 7.

69 Reply to eQ4 to competitors in electrical engineering services, question 7.

telecommunication networks. The question whether this product market should be further segmented between installation and maintenance services or between different types of telecommunication networks can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition.

4.3.1.3.2. Market for the provision of electrical engineering services for power lines

(58) As regards power lines engineering services, the market investigation confirmed that electrical engineering services for power lines differ from electrical engineering services provided to customers in other infrastructure sectors. In addition, a majority of both customers and competitors tended to indicate that high-voltage engineering services belong to a separate market from engineering services for medium and low-voltage networks. For example, smaller providers offer services only either on high-voltage or medium- and low-voltage networks, and while the larger engineering services groups can work on both high-voltage and medium- and low-voltage networks, this is done with separate teams and on the basis of different accreditations.[70] From a demand-side perspective, the electricity networks are also operated by different entities in France: RTE operates the high-voltage and very high-voltage network and Enedis operates the medium and low-voltage network. As one customer noted: "**In France, interventions on power lines are not the responsibility of the same project owners depending on the voltage levels, so necessarily different companies/ via different markets are involved*."[71]

(59) The feedback from the market investigation indicated that there were no grounds to distinguish according to whether the installation and maintenance of power lines concerned overground or underground lines, with respondents noting that suppliers tended to be active in both.[72] As one competitor noted, "*Equipment is different for overhead lines and underground lines but large companies usually operate in both segments*."[73] Similarly, one customer noted that the two types of works were granted to the same players in its own contracts.[74]

(60) For the purposes of this decision, the Commission considers that, within electrical engineering services, there is a separate market for electrical engineering services for power lines, which should be divided further between high-voltage networks, on the one hand, and medium to low-voltage networks, on the other hand. The question whether this product market should be further segmented between installation and maintenance services, or between other types of power lines, can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition.

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70 Replies to eQ3 to customers of electrical engineering services, question 11 and replies to eQ4 to competitors in electrical engineering services, question 11.

71 *Courtesy translation. Original French version: « *en France les interventions sur les lignes électriques ne relèvent pas des mêmes maîtres d'ouvrages selon les niveaux de tension donc nécessairement ce sont des entreprises différentes / via des marchés différents qui interviennent* ». Reply to eQ3 to customers of electrical engineering services, question 11.

72 Replies to eQ3 to customers of electrical engineering services, question 13 and replies to eQ4 to competitors in electrical engineering services, question 13.

73 Reply to eQ4 to competitors in electrical engineering services, question 13.

74 Reply to eQ3 to customers of electrical engineering services, question 13. *« Les 2 actions sont confiées aux mêmes acteurs dans le cadre des marchés de travaux. ».*

4.3.1.3.3. Market for the provision of electrical engineering services for substations

(61) As regards the market for the provision of electrical engineering services for substations, the market investigation shows that they are sourced by the same customers that also source electrical engineering services for power lines.[75] However, they consist of different services. 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 network. While market respondents noted that many of the larger service providers could provide installation and maintenance services for both substations and power lines, this was not the case for all providers, notably smaller ones.[76] One customer also noted: "*Power lines and substations are 2 different infrastructure and it is not a standard for an electrical company to provide both services*."[77] Competitors also indicated that the largest groups are able to provide both power lines and substations installation and maintenance services did so with separate internal teams and on the basis of separate certifications.[78] The largest customers also indicated that they sourced power lines and substation engineering services separately.[79] The results of the market investigation therefore tended to indicate that there are separate markets for substations and power lines engineering services.

(62) For the purposes of this decision, the Commission considers that, within electrical engineering services, there is a separate market for electrical services for substations. The question whether this product market should be further segmented between installation and maintenance services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition.

4.3.1.3.4. Market for the installation and maintenance of public lighting services

(63) In line with previous Commission precedents, the results of the market investigation indicated that public lighting could be considered a separate product market. Furthermore, the majority of both customers and competitors indicated that there were no grounds to further separate the market according to the type of service provided e.g. between traditional lighting (such as street lighting, traffic lights) or "smart" urban electrical equipment e.g. video-surveillance etc. on the basis that a significant majority of customers and all competitors indicated that providers can carry out engineering services for both traditional lighting and "smart" urban electrical equipment.[80]

(64) For the purposes of this decision, the Commission considers that, within electrical engineering services, there is a separate market for electrical engineering services for public lighting, which does not need to be segmented further by type of service

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75 Replies eQ3 to customers of electrical engineering services, question 2. Minutes of a call with a customer, 16 May 2022. Minutes of a call with a customer, 7 April 2022.

76 Replies to eQ3 to customers of electrical engineering services, question 12 and replies to eQ4 to competitors in electrical engineering services, question 12.

77 Reply to eQ3 to customers of electrical engineering services, question 12.

78 Replies to eQ4 to competitors in electrical engineering services, question 12.

79 Replies to eQ3 to customers of electrical engineering services, question 12.

80 Replies to eQ3 to customers of electrical engineering services, question 14 and replies to eQ4 to competitors in electrical engineering services, question 14.

provided. The question whether this product market should be further segmented between installation and maintenance services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition.

4.3.1.3.5. Market for the provision of electrical engineering services for the civil nuclear industry

(65) The results of the market investigation confirmed the existence of a separate market for the provision of electrical engineering services for the civil nuclear industry. Responses from both competitors and customers were unanimous in that electrical engineering service providers who are active on the overall industry sector are not necessarily able or qualified to provide their services to the civil nuclear sector.[81] Similarly, customers in the civil nuclear industry cannot source electrical engineering services from any service provider active on the overall industry sector.[82]

(66) As one customer explains, "*The provision of electrical engineering services in the civil nuclear sector requires detailed knowledge of nuclear standards and procedures, as well specific expertise as to how to act in such environment. Consequently, while most players active in the nuclear sector may also provide their services for the overall industry, the reverse is not true, and it would take quite some time for a player providing its services to the overall industry to become active in the nuclear sector."*[83]

(67) With respect to a subdivision of the market for electrical engineering services in the civil nuclear sector between installation works and maintenance, the results of the market investigation were inconclusive. While the larger competitors submit that all service providers can offer both installation and maintenance services, smaller competitors and customers tend to indicate that maintenance providers cannot always provide installation services.[84] This is mainly because maintenance projects are often smaller in size and can be carried out by smaller providers.[85]

(68) For the purposes of this decision, the Commission considers that, within electrical engineering services, there is a separate market for electrical engineering services for the civil nuclear industry. The question whether this product market should be further segmented between installation and maintenance services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition.

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81 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 6.1 and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 6.1.

82 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 6.1.1.

83 *Ibid.*

84 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 7, and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 7.

85 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 7.1 and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 7.1.

4.3.1.3.6. Conclusion on product markets for electrical engineering services

(69) For the purposes of this decision, the exact product market definition for electrical engineering services can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition. The Commission will therefore analyse the effects of the Transaction on the basis of the following product markets: markets for the provision of electrical engineering services (installation, maintenance, and both taken together) in the: telecommunications sector (overall, fixed line, mobile), high-voltage power lines (overall, overhead lines, and underground lines), medium and low-voltage power lines (overall, overhead lines, and underground lines), substations, and public lighting. With respect to the industry sector, the Commission will assess the effects of the Transaction on the market for the provision of electrical engineering services (installation, maintenance, and both) for the civil nuclear sector.

4.3.2. Geographic market

4.3.2.1. Commission's precedents

(70) In previous decisions, the Commission considered the markets for the provision of electrical engineering services to be at least national in scope.[86] 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.[87]

(71) With respect to the telecommunication networks segment, the Commission considered that the market was most likely national in scope[88]. However, the precise geographic scope of the market was ultimately left open, and the Commission assessed the market for the provision of services for telecommunication networks both at national and regional levels.[89]

(72) With respect to substations and high-voltage power lines, the Commission has previously considered that these were national in scope.[90] In a more recent case, the Commission has left open as to whether the market for power lines was national or regional in scope.[91] The Commission has previously considered that the geographic market for electrical engineering services for public lighting is national in scope.[92]

(73) The Commission has previously not defined a separate market for electrical engineering services for the civil nuclear industry.

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86 COMP/M.9270 Vinci Airports/Gatwick Airport, op. cit., para. 24; COMP/M.6623 Vinci/EVT Business, op. cit., para. 14; COMP/M.5701 Vinci/Cegelec, op. cit., para. 27 *et seq*.; COMP/M.10314 Vinci S.A./Energia y Servicios Dinsa II.

87 COMP/M.5701 Vinci/Cegelec, para. 28.

88 COMP/M.9728 Altice/Allianz/OMERS/Covage.

89 COMP/M.9728 Altice/Allianz/OMERS/Covage, *op. cit.*, para. 230.

90 COMP/M.5701 Vinci/Cegelec, *op. cit.*, para. 33. COMP/M.10314 Vinci S.A./Energia y Servicios Dinsa II, para 19.

91 COMP/M.10314 Vinci S.A./Energia y Servicios Dinsa II, para 19.

92 COMP/M.7137 – EDF/Dalkia en France, para 144.

4.3.2.2. Notifying Party's views

(74) The Notifying Party considers that the market for the provision of electrical engineering services should be considered at least national in scope and that a regional, i.e. narrower than national delineation of the market is irrelevant given that both the Parties and their main competitors are present at a national level and customers are public authorities, in relation to which the meeting of supply and demand happens at all levels (national, regional, departmental or municipal) and anywhere within the French territory.[93]

(75) This holds true especially with respect to engineering services in the infrastructure sector, including telecommunication networks.[94] The Notifying Party also agrees with the geographic delineation adopted by the Commission in previous decisions with respect to power lines and substations and further consider that the same reasoning should apply with respect to telecommunication networks and the provision of power lines given that the wide majority of operators and the main clients are active or present throughout whole or part of the national territory.[95] The Notifying Party did not provide any views on the geographic scope of engineering services for public lighting.

(76) As regards the provision of electrical engineering services for the civil nuclear industry, the Notifying Party submits while there are no Commission precedents, a decision of the French competition authority considered that the market was most likely national in scope, although noted the existence of regional elements with respect to maintenance.[96]

4.3.2.3. Commission's assessment

(77) The affected markets in the electrical engineering markets are all in France. For that reason, the focus of the market investigation was France.

(78) Overall, the feedback from the market investigation was mixed: while a majority of market participants indicated that large groups were providing services throughout France, and even across multiple countries, many also indicated that across the different engineering services for different types of customers, there are a much larger number of smaller players, who are active only regionally.[97] As one customer noted: "**A certain number of groups have an activity at the "national" level but there are also SMEs, which have a "local" activity because of their size (which does not allow them to look very far). These SMEs do more installation work, but are also able to respond to small "maintenance" contracts*."[98]

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93 Form CO, para. 136 *et seq.*

94 Form CO, para 138.

95 Form CO, para. 138.

96 Form CO, paras 384 et seq. and 388. Decision n°19-DCC-265.

97 Replies to eQ3 to customers of electrical engineering services, question 15 and replies to eQ4 to competitors in electrical engineering services, question 15.

98 *Original version : « *Un certain nombre de groupes ont une activité au niveau "national" mais il existe aussi des PME voire TPE, qui ont une activité "locale" en raison de leur taille (qui ne leur permet pas d'aller chercher très loin). Ces PME/TPE font plutôt des travaux d'installation, mais sont aussi aptes à répondre à de petits contrats de "maintenance"* » reply to eQ3 to customers of electrical engineering services, question 15.1.

4.3.2.3.1. Market for the provision of electrical engineering services for telecommunication networks

(79) As regards the geographic market for telecommunication services, the feedback from the market investigation was mixed. For example, respondents noted that all of the larger suppliers are active nationwide throughout France. As one competitor noted: "*For telecommunication market most of the companies have a national footprint. Only few of them are wider than national. This situation could evolve due to the fact that French market is very mature in FTTH compared to the rest of Europe*."[99] A number of customers active in fixed and mobile telecommunications noted that they worked with framework contracts with national pricing, for example one noted that: "*we have national bid with prices valid for the whole country*."[100] On the other hand, contracts for the rollout of fibre networks under the French "*Réseaux d'initiative publique*" plan for rollout of fibre in rural areas are conducted at regional level.[101] For these contracts, there may be more regional players active, due to the sometimes complex geological conditions for which local knowledge is needed.[102]

4.3.2.3.2. Market for the provision of electrical engineering services for power lines

(80) Similarly, for electrical engineering services for power lines, the large suppliers are active all over France.[103] On the other hand, the main customer for medium and low-voltage networks noted that: *"*"*Companies capable of offering the same service in most regions of France exist in small numbers (less than 10 out of 1,500 service providers with whom [customer] works). Most [customer] service providers operate in a few regions, or even just one… only 23% of [customer] purchases happen with large groups, which themselves are not always present in all regions or do not have skills to perform all activities.*"[104] As regards high-voltage networks, the Commission notes that the main customer for high-voltage networks proceeds with national framework contracts but the works are assigned at local level.[105]

4.3.2.3.3. Market for the provision of electrical engineering services for substations

(81) As regards the geographic market dimension for substations, feedback from market participants was mixed. Feedback from customers active in tendering for electrical engineering services for substations were split, with half indicating that their suppliers were active only at regional level, whereas for others, their suppliers were active at national level. This is reflected in the feedback from one customer who noted: "*For power lines and substations, all of our contractors work on several*

99 Reply to eQ4 to competitors in electrical engineering services, question 16.

100 Reply to eQ3 to competitors in electrical engineering services, question 17.1, minutes of a call with a customer, 7 April 2022.

101 Minutes of a call with a customer, 16 May 2022. Minutes of a call with a customer, 7 April 2022.

102 Minutes of a call with a customer, 7 April 2022.

103 Replies to eQ4 to competitors in electrical engineering services, question 15.

104 *Original version *« Les entreprises capables d'offrir un même service sur la plupart des régions de France existent en petit nombre (moins de 10 sur 1500 prestataires avec lesquels travaillent Enedis). La plupart des prestataires de [customer] interviennent sur quelques régions, voir une seule….seulement 23% des achats de [customer] se passent avec les grands groupes qui eux-mêmes ne sont pas toujours présents dans toutes les régions ou ne disposent pas des compétences pour exercer toutes les activités. »*. Reply to eQ3 to customers of electrical engineering services, question 15.1.

105 Form CO, paragraph 135.

regions of France and the majority of them work nationwide."[106] Larger competitors were typically active nationwide.[107] From a demand-side perspective, a majority of customers sourcing electrical engineering services for substations, sourced these services nationwide.[108] Of those customers, a majority indicated that prices did not differ significantly in different regions of France.[109]

4.3.2.3.4. Market for the provision of electrical engineering services for public lighting

(82) As regards the geographic dimension for electrical engineering services for public lighting, feedback from both customers and competitors indicated that the market was national, due to the presence of national players active across France and similarities in pricing across France.[110]

4.3.2.3.5. Market for the provision of electrical engineering services for the civil nuclear sector

(83) The majority of respondents submitted that the service providers for electrical engineering services for the civil nuclear industry are typically present in most of France's regions, or even nation-wide.[111] As one of the main customers explained, *"[this customer's] larger suppliers, like Bouygues and Equans, are active on a national level. While [this customer] wishes to also work with smaller suppliers who are typically active on a local level, those local suppliers however cannot offer the same services as the larger ones. When [this customer] has larger maintenance projects it needs specific staff qualification and expects the supplier to take control of all aspects of the project. The local players cannot fulfil these requirements."*[112] However, as that same customer noted, *"[f]or routine maintenance works the tenders are more often regional"*[113]

(84) Similarly, another customer commented, *"[r]oughly 80-90% of activity focuses on installation, ventilation, dismantling and waste treatment are realized with nationally-managed suppliers. Smaller contracts can be awarded to local suppliers."*[114]

(85) It follows that, while installation and larger maintenance projects are carried out by players active on a national level, smaller maintenance projects can also be addressed by local players.

4.3.2.3.6. Conclusion on geographic markets for electrical engineering services

(86) For the purposes of this decision, the exact geographic market definition for all electrical engineering services in the infrastructure sector can be left open as the

106 Reply to eQ3 to customers of electrical engineering services, question 15.1.
107 Replies to eQ4 to competitors in electrical engineering services, questions 2 and 15.
108 Replies to eQ3 to customers of electrical engineering services, question 3.
109 Replies to eQ3 to customers of electrical engineering services, question 17.
110 Replies to eQ3 to customers of electrical engineering services, question 15 and 17 and replies to eQ4 to competitors in electrical engineering services, questions 2 and 15.
111 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, questions 13, 13.1, 13.2, and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 13.
112 Minutes of the call with a customer, 12.04.2022.
113 *Ibid.*
114 Minutes of the call with a customer, 03.05.2022.

Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition. The Commission will therefore analyse the effects of the Transaction on the basis of both national (i.e. France) and regional (i.e. regions of France) level.

(87) However, as regards the provision of electrical engineering services, for the civil nuclear industry, the Commission will analyse the effects of the Transaction on a national level for installation services, and on a regional level for maintenance services.

4.4. Deployment and operation of optical fibre networks in low density public-initiative areas

(88) In the telecommunications sector in France, Axione, a subsidiary of Bouygues Energies & Services, acts as an optical fibre network constructor and operator. Contrary to network installation and maintenance services, which are essentially engineering services in nature as discussed in Section 4.3 above, network deployment and operation comprise a broader set of services including network planning, design, implementation and management.

(89) Axione's core activities are dedicated to the rolling out of FttH[115] networks outside high-density areas in the context of so-called public initiative networks (*Réseaux d'initiative publique*).[116]

(90) The rolling-out of public initiative FttH networks is part of a national plan launched in 2013 to deploy very high-speed internet (the "*France Très Haut Débit*" plan) to the entire French territory. The initial aim was to have the entire territory covered with high-speed internet network by the end of 2022. The plan foresees the distinction within the French territory of highly and less densely populated areas. For those of the less densely populated areas that did not attract sufficient interest by private operators to invest in the deployment of optical fibre networks, part of the investment required to roll out the networks is covered by European, national and local government subsidies (hence the designation as "public initiative networks") whereas the remainder of the investment is being paid for by the network operator. The deployment and/or operation of the network is awarded to a private operator to whom the relevant local public authority delegates the deployment and/or operation of the network typically via a public service delegation (*délégation de service public*).[117]

(91) In this context, Axione undertakes the design and the monitoring of the physical roll-out of the network, whereas the civil engineering works are subcontracted to [information regarding subcontractor] or other providers. Depending on the public initiative network, the network is then operated by Axione under a public service delegation agreement.[118]

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115 Fibre to the home ("FttH").

116 Public Initiative Networks are rolled out in territories where, following a call for expressions of interests, no infrastructure operator has expressed an interest in rolling-out the FttH network on private funds. These networks are therefore rolled out partially on public funds.

117 COMP/M.9728 – Altice/Omers/Allianz/Covage of 27 November 2020, paragraphs 21 et seq.

118 Form CO, paragraph 179.

4.4.1. Product market

(92) The Commission has previously taken the view that a separate product market exists for the deployment and operation of optical fibre networks in low density public-initiative areas (so-called "*Zones Moins Denses d'initiative publique*"), due to the specificities of the French market and the particular regulatory framework that applies in France outside of high-density areas.[119]

(93) The Commission assessed, but ultimately left open, whether less densely populated areas subject to private investment commitments ("*zones AMEL*") are part of the same market as less densely populated areas subject to public initiative networks ("*zones RIP*").[120] The Commission further considered, but left open, a segmentation of the market by type of network, *i.e*., copper, FttO, FttO and FttH or FttH only.[121]

(94) The Notifying Party agrees with the Commission's previous finding that the deployment and operation of optical fibre networks in low density public-initiative areas constitutes a separate market and considers a further segmentation by type of area or network irrelevant for the purpose of assessing vertical relationships in the present case.[122]

(95) With regard to customers active in the deployment and operation of optical fibre networks in less densely populated areas, the vast majority of respondents indicated that it was not warranted to further divide the market for fixed telecommunications services according to the type of fixed telecommunications network (e.g. copper lines or optical fibre), nor between different types of optical fibre network architectures (e.g. FttH[123], FttB[124], FttC[125] etc.), nor between different areas of network deployment (e.g. high- vs. low-density), because the competencies required to work on different types of network, network architecture and areas are similar.[126]

(96) The Commission considers that for the purposes of this decision, the exact market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition. The Commission will therefore assess the effects of the Transaction on the potential market for the deployment and operation of optical fibre networks in low density public-initiative areas and potential narrower markets, i.e., by type of network.

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119 COMP/M.9728 – Altice/Omers/Allianz/Covage of 27 November 2020, paragraph 63. For the same reasons, the Commission held that such service market could be specific to France and not necessarily exist in other Member States.

120 COMP/M.9728 – Altice/Omers/Allianz/Covage of 27 November 2020, paragraph 70.

121 COMP/M.9728 – Altice/Omers/Allianz/Covage of 27 November 2020, paragraph 75.

122 Form CO, paragraph 444.

123 Fibre to the home ("FttH").

124 Fibre to the building ("FttB").

125 Fibre to the curb ("FttC").

126 Replies to eQ3 to customers of electrical engineering services, questions 8-10 and replies to eQ4 to competitors in electrical engineering services, questions 8-10.

4.4.2. Geographic market

(97) The Commission has previously found the market for the deployment and operation of optical fibre networks in low density public-initiative areas was national in scope because network operators are national operators (including Altitude Infra., Covage, SFR Collectivités, TDF, and Orange), which are able to participate in calls for tenders throughout the entire national territory.[127]

(98) The Notifying Party agrees with the Commission's previous findings.[128]

(99) The Commission considers that for the purposes of this decision, the exact market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement under any plausible market definition. As (vertically) affected markets only arise on a regional level, the Commission assesses the market for the deployment and operation of optical fibre networks in low density public-initiative areas at regional level.

4.5. Provision of HVAC engineering services for the civil nuclear industry

4.5.1. Product market

4.5.1.1. Commission's precedents

(100) The Commission has previously identified a market for the provision of HVAC services on civil nuclear sites.[129] According to the Commission, ventilation systems on nuclear sites have to meet specific requirements, such that only specialized operators can build and maintain these systems.[130] While in the Commission's precedent the market investigation confirmed that HVAC systems on civil nuclear sites are a separate product market distinct from the general market for the provision of industrial ventilation systems, the question was ultimately left open.[131] In addition, the Commission considered that the market could be further divided between (i) installation works and (ii) maintenance services.[132]

4.5.1.2. Notifying Party's views

(101) The Notifying Party does not contest the Commission's previous findings.[133]

4.5.1.3. Commission's assessment

(102) The results of the market investigation confirmed the existence of a separate market for the provision of HVAC engineering services for the civil nuclear industry. The respondents were unanimous in that HVAC engineering service providers who are active on the overall industry sector are not necessarily able to

127 COMP/M.9728 – Altice/Omers/Allianz/Covage of 27 November 2020, paragraph 81.
128 Form CO, paragraph 445.
129 COMP/M.4180 Gaz de France/Suez of 14 November 2006, paragraph 1019.
130 *Ibid.*
131 COMP/M.4180 Gaz de France/Suez of 14 November 2006, paragraph 1020.
132 COMP/M.4180 Gaz de France/Suez of 14 November 2006, paragraph 1021.
133 Form CO., para. 351.

also provide their services to the nuclear sector.[134] Similarly, customers in the civil nuclear industry cannot source electrical engineering services from any service provider active on the overall industry sector.[135]

(103) As one customer explains, *"(…)the provision of HVAC engineering services in the civil nuclear sector requires detailed knowledge of nuclear standards and procedures, as well [as] specific expertise as to how to act in such environment. However, the level of expertise required in relation to HVAC services in the civil nuclear sector is even higher than for electrical engineering services (…)"*[136]

(104) Respondents further tended to indicate that there are separate markets for installation and maintenance works.[137] This is because HVAC maintenance seems to be less sophisticated than installation services and can therefore be carried out by smaller players, who cannot necessarily provide installation services. One customer noted in this regard that "*installation and maintenance services in relation to HVAC systems are provided by different suppliers. (…) in practice, HVAC maintenance usually consists in changing filters, which are provided by different suppliers than providers of installation services."*[138]

(105) Moreover, customers typically tender the larger installation contracts and the smaller maintenance contracts separately. As one customer *explains "Roughly 80-90% of activity focuses on installation, ventilation, dismantling and waste treatment are realized with nationally-managed suppliers. Smaller contracts can be awarded to local suppliers."*[139]

(106) For the purposes of the assessment of the Transaction, the Commission will therefore consider separate markets for the provision of HVAC installation and maintenance services for the civil nuclear industry.

4.5.2. Geographic market

4.5.2.1. Commission's precedents

(107) In previous decisions, the Commission considered that the market for the provision of ventilation systems on nuclear sites is most likely national in scope.[140] Although certain calls for tenders for the provision of HVAC services on nuclear sites are published at a European level, qualification procedures differ between customers, which might create entry barriers towards entrants from neighbouring countries.

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134 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 10, and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 10.

135 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 10.1.

136 *Ibid.*.

137 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 11, and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 11.

138 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 11.1.

139 Minutes of the call with a customer, 03.05.2022.

140 COMP/M.4180 Gaz de France/Suez of 14 November 2006.

4.5.2.2. Notifying's Party views

(108) The Notifying Party considers that the market for the provision of nuclear HVAC engineering services is at least national in scope.[141] However, the Notifying Party considers that the precise geographic scope of the relevant market can be left open, given that the activities of the parties to the Transaction are performed mainly in France.[142]

4.5.2.3. Commission's assessment

(109) The results of the market investigation confirmed that the market for the provision of HVAC engineering services for the civil nuclear industry is national in scope. All of the respondents indicated that the service providers who are active in that market are typically present nation-wide.[143] As one customer explained, *"Considering the volume of necessary activities and qualifications required to work, the size of the companies involved corresponds to the ones working nationally."*[144] All customers also replied that they source their HVAC engineering services on a national basis.[145]

(110) As one customer explained, *"[t]he national panel (…) covers 80% of the activities needed for [this customer's] business. Some panellists are dedicated to a single business unit but most suppliers are nationwide."*[146]

(111) The Commission notes, however, that similar considerations to those voiced in respect to smaller electrical maintenance projects in paragraph (83) above, might also apply in the market for the provision of HVAC maintenance for the civil nuclear industry.

(112) As one customer explained, *"[t]he CAPEX-intensive projects are new installations of ventilation systems (e.g. during the installation of new workshops), whereas ventilation maintenance does not require such important activities and specific knowledge, being mainly focused on filters replacement."*[147] It therefore appears likely that smaller HVAC maintenance projects can also be carried out by smaller, more local service providers.

(113) In light of the above, the Commission considers the market for the provision of HVAC installation services for the civil nuclear industry to be national in scope. As regards the provision of HVAC maintenance services for the civil nuclear industry, the exact geographic market definition can be left open, as the Parties do not overlap with respect to these activities. The market for the provision of HVAC maintenance services for the civil nuclear industry will therefore not be considered further in this decision.

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141 Form CO, para. 351.

142 *Ibid.*

143 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, questions 16, 16.2, and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 16.

144 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 16.2.

145 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 13.

146 Minutes of the call with a customer, 03.05.2022.

147 Minutes of the call with a customer, 03.05.2022.

5. COMPETITIVE ASSESSMENT

5.1. Legal framework

(114) Under paragraphs 2 and 3 of Article 2 of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, or the functioning of the EEA agreement, in particular through the creation or strengthening of a dominant position. In this respect, a merger may entail horizontal and/or vertical effects.

5.1.1. Horizontal framework

(115) The legal test for the assessment of horizontal effects of a merger is set out in the Merger Regulation and in the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines").[148]

(116) Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.[149]

(117) Non-coordinated effects may significantly impede effective competition through the creation or strengthening of the dominant position of a single firm, or through the elimination of important competitive constraints on one or more firms, which consequently would allow those firms to have increased market power without resorting to coordinated behaviour. In that 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.[150]

(118) The Horizontal Merger Guidelines list a number of factors influencing whether significant non-coordinated effects are likely to result from a merger, such as 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. Not all of these factors need to be present to make non-coordinated effects likely, and it is not an exhaustive list.[151]

5.1.2. Non-horizontal framework

(119) The legal test for the assessment of non-horizontal effects of a merger is set out in the Merger Regulation and the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations

148 OJ C 31, 05.02.2004.
149 Horizontal Merger Guidelines, paragraph 22.
150 Horizontal Merger Guidelines, paragraphs 23-24.
151 Horizontal Merger Guidelines, paragraphs 26-38.

between undertakings ("Non-horizontal Merger Guidelines").[152] According to the Non-horizontal Merger Guidelines, foreclosure effects may occur where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[153] Foreclosure effects may also occur where the combination of products in related markets may confer on the merged entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices.[154]

(120) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[155]

(121) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[156]

(122) In assessing the likelihood of an anticompetitive rival foreclosure scenario in relation to conglomerate effects, the Commission examines, first, whether the merged entity would have, post-merger, the ability to foreclose its rivals, second, whether it would have the economic incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition.[157]

5.2. Catenaries and overhead contact lines

5.2.1. Horizontally affected markets - installation and maintenance of catenaries and overhead contact lines[158]

(123) As regards the installation and maintenance of catenaries and overhead contact lines, the Transaction would give rise to the following horizontally affected markets in Belgium, Luxembourg, Austria, France and the Netherlands:

– Belgium:

- overall market for the installation and maintenance of catenaries and overhead contact lines (consisting of both long-distance and metropolitan rail)
- potential market for long-distance rail

152 OJ C 265, 18.10.2008, p. 6.
153 Non-horizontal Merger Guidelines, paragraph 18.
154 Non-horizontal Merger Guidelines, paragraph 93.
155 Non-horizontal Merger Guidelines, paragraph 32.
156 Non-horizontal Merger Guidelines, paragraph 59.
157 Non-horizontal Merger Guidelines, paragraph 94.
158 No horizontally affected market would arise from the Transaction for the manufacture and supply of catenary equipment.

- potential market for metropolitan rail

– Luxembourg:

- overall market for the installation and maintenance of catenaries and overhead contact lines (consisting of both long-distance and metropolitan rail)

- potential market for long-distance rail

– Austria:

- potential market for metropolitan rail

– France:

- potential market for long-distance rail

– The Netherlands:

- potential market for metropolitan rail

(124) No affected market would arise from the Transaction for the installation and maintenance of third rail systems.

5.2.1.1. Market shares

(125) Since the sourcing of installation and maintenance services for catenary and overhead contact lines principally takes place through tenders (as will be explained in sections 5.2.1.2 *et seq.* below), and given the relatively limited size of the affected markets, the Commission notes that market shares may vary significantly from year to year, depending on the award of each particular tender.

(126) This being said, the Commission notes that, despite such fluctuation in the market shares, the Transaction would give rise to the same affected markets, even if the Parties' combined market shares were to be considered over several years.[159] The competitive assessment will therefore be conducted on the basis of the Parties' market shares in 2021.

(127) The Notifying Party provides an estimate of the Parties' individual and combined market shares in 2021 in Table 1 below.

[159] See Annex 7.3.2.1. to the Form CO: Parties' combined market shares for 2016-2021 in Belgium, France and the Netherlands; 2018-2021 in Luxembourg; 2020-2021 in Austria. Note that Bouygues entered the Austrian market in 2020.

Table 1: Estimates of the Parties' individual and combined market shares on the market for the installation and maintenance of catenaries and overhead contact lines by type of customer (2021)

Installation and maintenance of catenaries and OCL	Market size (€m)	Bouygues		Equans		Bouygues + Equans	
		Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share
Austria	[…]	[…]	[0-5]%	[…]	[10-20]%	[…]	[10-20]%
Long-distance	[…]	[…]	-	[…]	[10-20]%	[…]	-
Metropolitan	[…]	[…]	[10-20]%	[…]	[5-10] %	[…]	[20-30]%
Belgium	[…]	[…]	[30-40]%	[…]	[20-30]%	[…]	[60-70]%
Long-distance	[…]	[…]	[30-40]%	[…]	[20-30]%	[…]	[60-70]%
Metropolitan	[…]	[…]	[20-30]%	[…]	[30-40]%	[…]	[50-60]%
France	[…]	[…]	[10-20]%	[…]	[5-10]%	[…]	[10-20]%
Long-distance	[…]	[…]	[10-20]%	[…]	[5-10]%	[…]	[20-30]%
Metropolitan	[…]	[…]	[5-10]%	[…]	[5-10]%	[…]	[10-20]%
Luxembourg	[…]	[…]	[30-40]%	[…]	[30-40]%	[…]	[60-70]%
Long-distance	[…]	[…]	[40-50]%	[…]	[30-40]%	[…]	[70-80]%
Metropolitan	[…]	[…]	-	[…]	[10-20]%	[…]	-
Netherlands	[…]	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%
Long-distance	[…]	[…]	-	[…]	-	[…]	-
Metropolitan	[…]	[…]	[10-20]%	[…]	[0-5]%	[…]	[20-30]%

Source: Form CO, Annex 7.3.2.1.

5.2.1.2. Belgium

(128) In Belgium, the Transaction gives rise to affected markets for the provision of installation and maintenance services for catenaries and overhead contact lines overall, as well as for both long distance rail and metropolitan rail considered separately.

Table 2: Estimates of the Parties' and their main competitors' market shares in Belgium

Installation and maintenance of catenaries and OCL	2018		2019		2020		2021	
	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share
Overall market								
Bouygues	[…]	[10-20]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%
Equans	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[20-30]%
Bouygues + Equans	*[…]*	*[40-50]%*	*[…]*	*[50-60]%*	*[…]*	*[50-60]%*	*[…]*	*[60-70]%*
Mobix Engema		[10-20]%		[10-20]%		[10-20]%		[10-20]%
Strukton		[10-20]%		[10-20]%		[10-20]%		[10-20]%
Duchêne Eiffage		[10-20]%		[10-20]%		[5-10]%		[5-10]%
Eqos		[10-20]%		[5-10]%		[5-10]%		[5-10]%
Total Market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100.0%**
By customer type – long-distance rail								
Bouygues	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Equans	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%

Installation and maintenance of catenaries and OCL	2018		2019		2020		2021	
	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share
Bouygues + Equans	*[…]*	*[40-50]%*	*[…]*	*[50-60]%*	*[…]*	*[50-60]%*	*[…]*	*[60-70]%*
Mobix Engema		[20-30]%		[10-20]%		[10-20]%		[10-20]%
Strukton		[10-20]%		[10-20]%		[10-20]%		[10-20]%
Duchêne Eiffage		[10-20]%		[10-20]%		[10-20]%		[5-10]%
Total Market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100.0%**
By customer type – metropolitan rail								
Bouygues	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[20-30]%
Equans	[…]	[20-30]%	[…]	[40-50]%	[…]	[50-60]%	[…]	[30-40]%
Bouygues + Equans	*[…]*	*[30-40]%*	*[…]*	*[40-50]%*	*[…]*	*[60-70]%*	*[…]*	*[50-60]%*
Eqos		[60-70]%		[50-60]%		[40-50]%		[40-50]%
Total Market	**[…]**	**100.0%**	**[…]**	**100.0%**	**[…]**	**100.0%**	**[…]**	**100.0%**

Source: Form CO, Annex 7.3.2.1.

5.2.1.2.1. Notifying Party's arguments

(129) The Notifying Party submits that the Belgian market for the installation and maintenance of catenaries and overhead contact lines is a limited market estimated at [Market size] euros, for which market shares should be put into perspective even more than in the larger markets.

(130) According to the Notifying Party, the combined entity will still keep facing competition from at least three large players: Mobix Engema, Strukton and Duchêne, with individual market shares ranging from [5-10]% to [10-20]% each, on the overall market for the installation of catenaries and overhead contact lines as well as on the potential market for long-distance rail.

(131) The Notifying Party further submits that on the potential market for long-distance rail, where the Parties' activities mainly overlap, the Parties will depend on the national railway infrastructure operator [Information regarding customer]. Indeed, [Information regarding customer] are the only customers of Bouygues in Belgium. [Information regarding customer] also represents […] of Equans' turnover, which is therefore also strongly dependent on this customer in the market concerned.

(132) With respect to the foregoing, the Notifying Party argues that the Parties' market shares at a given time cannot adequately reflect a lasting market power since these market shares are likely to be challenged at each tender or contract renewal. The existence of credible players bidding for the same tenders is an indicator of the level of competition intensity that needs also be taken into account.

(133) The Notifying Party further claims that data from the tenders in Belgium for 2016-2022[160] show that the Parties have moderate success rates: (i) […] in volume on all tenders launched and (ii) […] in volume and […] in value on tenders for which the Parties have bid (for both trains and tramways). In addition, in the Notifying

160 See Annex 7.3.2.2 to the Form CO.

Party's view, the Transaction will have a limited impact given that the Parties have only bid for […] same tenders out of […] total tenders listed for 2016-2022.

(134) In this respect, the Notifying Party claims that these tenders' analysis reveals that the Parties face a number of other credible players (i.e. Mobix Engema, Strukton and Duchêne), that are able to win tenders against the Parties and to increase their market position.

(135) Finally, the Notifying Party highlights that the market is characterized by low barriers to entry.

5.2.1.2.2. Commission's assessment

(136) From the outset, the Commission notes that the overall market for the installation and maintenance of catenaries and overhead contact lines in Belgium is driven mainly by the segment for long-distance rail, given its much larger size compared to the segment for metropolitan rail. Therefore, the below considerations with respect to the potential market for long-distance rail also apply if an overall market, comprising both long-distance and metropolitan rail, were to be considered. When such considerations also apply to the potential market for metropolitan rail, this will be indicated.

(137) First, with respect to whether the Parties' combined market shares adequately reflect the Parties' market position, given that the market is driven by tenders, the Commission notes that the Parties' combined market shares have been consistently high in the overall market over the last 4 years with a tendency to further increase, as shown in Table 2 above.

(138) When looking at the Parties' combined market shares in the overall market, they have been constantly increasing from [40-50]% in 2018 to [60-70]% in 2021. Similarly, in the potential market for long-distance rail, the Parties combined market shares have been constantly increasing from [40-50]% in 2018 to [60-70]% in 2021. The same consideration also applies to the potential market for metropolitan rail, where the Parties market shares increased from [30-40]% in 2018, to [50-60]% in 2021. When extending the time period considered further back to 2016 and 2017, the steady long-term increase of the Parties' combined market shares in both market delineations is even more accentuated.[161]

(139) The Commission therefore considers that the Parties' high combined market shares, as depicted in Table 2, are representative of their market position in Belgium.

(140) Second, the Belgian market is highly concentrated, with a small number of competitors and relatively few customers. The Parties' strong market position in Belgium is confirmed by the market investigation. With respect to the potential market for metropolitan rail, the majority of customers in this segment confirmed that the Parties are 2 of the 3 main service providers.[162] The majority of responses from both customers and competitors indicate that the Parties are 2 out of the 3 main service providers in Belgium also for long-distance rail, along with Mobix.[163]

161 See Table no. 66, Form CO.

162 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.4.

163 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.4 and replies to eQ2 to competitors, question C.2.1.

A number of respondents further commented, that the Parties and Mobix are in fact the only service providers able to offer their services across the Belgian territory. The remaining competitors usually focus their activities on a certain part of Belgium, mainly due to constraints in their machinery and workforce resources, or due to the language barriers present within Belgium.[164]

(141) With respect to the language barriers within Belgium, a competitor explained "*[a]ll official documents are published in one of these 3 languages* [i.e. Dutch, French and German], *and a safety examination of the personnel, usually in Dutch or French, requires that competitors can understand and speak in these languages. (…) certification requires suppliers to pass safety exams for their personnel working on the tracks (some of which must speak the local language for safety reasons).*" For this reason, as explained by one customer, with the exception of the Parties and Mobix, other competitors tend to focus on either Flanders (Dutch-speaking) or Wallonia (French speaking). "*Some of the players (…) chose to focus their activities on certain parts of Belgium, e.g. Duchene is mainly active in Wallonia and the Brussels region, whereas companies like Strukton, with a Dutch parent company, are mainly active in Flanders. This is also related to the language barriers. Those active across Belgium are currently only Colas Rail* [i.e. Bouygues], *Fabricom* [i.e. Equans] *and Mobix.*"[165]

(142) Apart from their similar geographical footprint within Belgium, the Parties are also perceived by the majority of market participants as close competitors, also in comparison to other competitors, due to their similar characteristics in terms of machinery and workforce resources, their knowledge of local regulation, pricing and ability to carry our projects of the same size.[166] As one customer explains "*[f]rom our view, both companies are capable to execute all catenary and overhead contact lines works that are requested, from smaller to the biggest challenges in catenary and overhead contact lines works*."[167]

(143) It follows that the Transaction would decrease the nation-wide service providers in Belgium from 3 to 2, both on the overall market, as well as on either of the potential narrower markets for long-distance and metropolitan rail, leading to a negative impact on the market in relation to choice and prices. The majority of customers submitted that they do not have sufficient participation in their tenders, or might not have sufficient participation in the future due to the Transaction.[168] Moreover, all customers also expect the Transaction to lead to higher prices,[169] while a significant majority of both customers and competitors expect that the Transaction will lead to a decrease of choice between installation and maintenance service providers.[170]

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164 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.4, C.12.1, and replies to eQ2 to competitors, question A.1., C.2.1, C.15.

165 See minutes of call with customer, 22.04.2022.

166 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.5 and replies to eQ2 to competitors, question C.3.

167 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.5.

168 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.2.

169 Replies to eQ1 to customers of railway contact lines and catenary equipment, question D.2.

170 Replies to eQ1 to customers of railway contact lines and catenary equipment, question D.2 and replies to eQ2 to competitors, question D.2.1.

(144) The Commission does not consider the tender data provided by the Notifying Party as sufficient to offset the Commission's findings on the closeness of competition between the Parties. In particular, certain constraints with respect to the tender data submitted,, such as lack of information on competitors' participation or subcontracting, limit the informative value of the bidding analysis. As a consequence, the Commission considers that the results of the market investigation and the structural indicators of the market should prevail.

(145) Third, two market participants submitted that Equans is an important contracting partner for other companies, who do not have the resources to carry out larger projects by themselves and to compete against Mobix and Bouygues.

(146) As one competitor explains *"[c]ompetitors need a certain capacity to reliably execute a project within the short timeframe available (working mainly on weekends and overnight). Otherwise, the network operator applies contractual fines.* [This competitor], *albeit a class 8 player, has only c.25 blue collar workers qualified for catenaries works and one cannot simply put bridge construction workers on a catenaries project. To alleviate this risk,* [this competitor] *often teams up with Equans (...) to combine resources and share the burden. (...) competitors like Colas Rail and Mobix Engema, which only deals with catenaries in Belgium, have about three times more human resources than* [this competitor]*."* This competitor highlights the importance of Equans as a contracting partner, noting that it *"(...)works for the past 10 years with Equans for their quality of service and for the level of trust between parties, as well as the trust built with our common clients. This is impossible to find in other parties."*[171]

(147) Another company active in railway track installation, which has no in-house catenary unit, often outsources the catenary-part of a project to Equans. According to this company, Equans is the only sizable catenary and overhead contact lines installer, which is not active in track installation. Equans is therefore one of the few subcontractors to make competitive offers to this company for the catenary part. Bouygues, on the other hand, being itself active in track installation and therefore a competitor to this company, is not considered by this company as a potential contracting partner: *"[i]f the Transaction goes ahead, 50% of the catenary and overhead contact lines market for railtrack infrastructure will be concentrated with Bouygues. Already today the market is very limited, as some catenary and overhead contact lines companies with railtrack construction capacities refuse to give prices, or offer uncompetitive prices."*[172]

(148) In this regard, the Parties confirm that in the years 2016-2021, [share of outsourcing] of Equans turnovers was generated through subcontracted works.[173] These activities of Equans are not reflected in the tender data provided by the Notifying Party, although they exert competitive constraints on Bouygues, by either reinforcing smaller competitors in catenaries and overhead contact lines, or by reinforcing Bouygues' competitors in tenders for railway projects including both a track and a catenary part.

171 Replies to eQ1 to competitors of railway contact lines and catenary equipment, question C.13.2.1.
172 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.2.1.
173 See response to question 4, PN RFI 5.

(149) Fourth, a majority of market participants indicated that there are several important barriers to entry in the Belgian market for installation and maintenance of catenaries and overhead contact lines. Such barriers apply to both the overall market for installation and maintenance services for catenaries and overhead contact lines, as well as to both potential narrower markets for long-distance and metropolitan rail.

(150) The main barrier appears to be the requirement to hold an "H2 Class 8" certification, in order to be able to participate in a public tender for a catenary and overhead contact line project of a value of more than EUR 5.3Mn.[174] As the main customer confirms, most of its tenders require an "H2 Class 8" certificate.[175] Certification criteria include previous experience with projects of a smaller classification, minimum workforce resources and specific turnover requirements.[176]

(151) A further barrier to entry (see also paragraph (141) above) relates to the three languages spoken in Belgium (i.e. Dutch, French and German), as all official documents are published in one of these three languages, and a safety examination of the personnel, usually in Dutch or French, requires that the personnel can understand and speak in these languages.[177]

(152) The catenary installation equipment (i.e. engineering trains, trucks, elevating platforms etc.) of the potential entrant also needs to be homologated for the safety requirements imposed by the Belgian authorities before being eligible to be deployed in Belgium, which constitutes a further barrier.[178] While most countries accept a common EU homologation, Belgium applies stricter safety standards, which means equipment homologated, e.g., for France or the Netherlands cannot immediately be used in Belgium.[179]

(153) As one customer pointed out, *"[i]f foreign companies want to work on Belgian rail infrastructure, they will need to have their machinery equipped with safety systems specific for Belgian Territory and certified by the related authorities"*.[180]In light of the above, one competitor noted that a new entrant would require approximately 18 months to obtain the required certifications and homologation of its equipment.[181] Another competitor submitted that the costs of entry would be around EUR 5m in order to become active on smaller projects.[182]

(154) As a result of the above, a significant majority of both customers and competitors do not expect any new entrants in the Belgian market for catenaries and overhead contact lines in the next 3 years.[183]

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174 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.9 and replies to eQ2 to competitors, question C.7.

175 See minutes of the call with Infrabel, 22.04.2022.

176 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.9.3 and replies to eQ2 to competitors, question C.7.3.

177 See minutes of the call with a competitor, 20.04.2022.

178 Replies to eQ2 to competitors of railway contact lines and catenary equipment, question B.B.4.

179 See minutes of the call with a competitor, 20.04.2022.

180 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.5.5.1.

181 Replies to eQ2 to competitors of railway contact lines and catenary equipment, question C.11.

182 *Ibid.*

183 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.12 and replies to eQ2 to competitors, question C.10.

(155) Fifth, given the concentrated nature of the market, with only one other market player that has a similar footprint to the Parties, the Commission considers that any buying power that customers may have cannot offset the likely negative effects of the Transaction in Belgium.

5.2.1.2.3. Conclusion

(156) In light of the above considerations, the Commission concludes that in the overall market for the installation and maintenance of catenaries and overhead contact lines in Belgium, as well as in both the potential narrower markets in Belgium for long-distance and metropolitan rail, the Transaction raises serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement due to horizontal non-coordinated effects in particular because (i) the Parties have high combined market shares; (ii) the Parties are 2 out of the 3 service providers able of providing their services across Belgium and would thus face limited competition in the foreseeable future; (iii) the closeness of competition between the Parties' services; and (iv) the existence of significant barriers to entry.

5.2.1.3. Luxembourg

(157) In Luxembourg, the Transaction gives rise to affected markets as regards the installation and maintenance of catenaries and overhead contact lines overall and in respect of long-distance railways. Bouygues is not active in Luxembourg as regards metropolitan railways.

Table 3: Estimates of the Parties' and their main competitors' market shares in Luxembourg

Installation and maintenance of catenaries and OCL	**2018**		**2019**		**2020**		**2021**	
	Turn over (€m)	**Market share**	**Turn over (€m)**	**Market share**	**Turn over (€m)**	**Market share**	**Turn over (€m)**	**Market share**
Overall market								
Bouygues	[…]	[50-60]%	[…]	[50-60]%	[…]	[20-30]%	[…]	[30-40]%
Equans	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Bouygues + Equans	*[…]*	*[80-90]%*	*[…]*	*[70-80]%*	*[…]*	*[50-60]%*	*[…]*	*[60-70]%*
TSO Caténaires		[10-20]%		[20-30]%		[40-50]%		[30-40]%
Total Market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100.0%**
By customer type – long-distance rail								
Bouygues	[…]	[60-70]%	[…]	[50-60]%	[…]	[20-30]%	[…]	[40-50]%
Equans	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[30-40]%
Bouygues + Equans	*[…]*	*[80-90]%*	*[…]*	*[70-80]%*	*[…]*	*[60-70]%*	*[…]*	*[70-80]%*
TSO Caténaires		[10-20]%		[20-30]%		[30-40]%		[20-30]%
Total Market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100.0%**

Source: Form CO, Annex 7.3.2.1.

5.2.1.3.1. Notifying Party's arguments

(158) The Notifying Party submits that the market is very specific in Luxembourg given its limited size of around [Market size] euros, which leads to a significant variation in market shares depending on the award of each particular tender.

(159) The market is generally viewed by the Notifying Party as an extension of the French market rather than a separate standalone market given the similar characteristics of the catenary systems, the geographic proximity, and the presence of French players on the market. Luxembourg and France should therefore, according to the Notifying Party, be considered a single market with sufficient competition.[184]

(160) The Notifying Party further argues that the market is characterised by low barriers to entry, given that catenaries in Luxembourg and in France have comparable designs.

5.2.1.3.2. Commission's assessment

(161) As regards the Luxembourg market, the Commission notes that, in order to maintain effective competition in its tenders for catenary and overhead contact line tenders, CFL, the national railway operator and only customer in the long-distance rail segment, requires at least three offers from qualified service providers.[185] In this regard, the customer voiced the concern that the Transaction might lead to it receiving less than three offers to its tenders, which would mean an increased dependency on the two remaining players post-transaction, i.e. TSO and the merged entity.

(162) Following the Transaction, the combined market share of the Parties would exceed 60% on the overall market for the installation and maintenance of catenaries and overhead contact lines in Luxembourg and exceed 70% on the potential market in Luxembourg for long-distance rail. The Transaction would reduce the number of suppliers based in Luxembourg from three to two.

(163) However, the results of the market investigation indicate that sufficient, timely and sustained entry of other competitors based in France into the Luxembourg market is likely and that such competitors will be capable of constraining the merged entity.

(164) First, the certification and other regulation requirements, (as described in paragraph (28)), which normally constitute the main barrier to entry for foreign suppliers, are less relevant for French service providers seeking to enter the Luxembourg. This is because the Luxembourg catenary system is based on the French one and French providers thus do not need to obtain further certification.

(165) As CFL explains *"[c]ompanies that install the French catenary system are certified by the SNCF.*[186] *Luxembourg orientates itself on this certification and imposes it as a prerequisite for participating in tenders."*[187] *"Since the catenary system in Luxembourg is based on French technologies, CFL is working with French companies, not least because of its geographical proximity. (…) It is important that all installed technologies and equipment are certified accordingly. The French catenary system (V200) is already certified. In order to simplify the overall certification process of a new line, this system is the only one that is*

184 See Form CO, para. 687 et seq.
185 See minutes of the call with CFL, 18.03.2022.
186 Société nationale des chemins de fer français (SNCF) is the French national railway operator.
187 Replies to eQ2 to competitors in railway contact lines and catenary equipment, question B.B.5.

installed. (…) French companies are familiar with the catenary system that is being installed, as it is the same system SNCF and SNCB is installing in their railway infrastructure.".[188]

(166) TSO, the Parties' only competitor currently active in Luxembourg, confirms that regulations, standards and certification processes are similar between France and Luxembourg.[189]

(167) Second, the results of the market investigation confirmed that, in order for a French competitor to provide services in Luxembourg, it does not need to be established in this country. CFL submitted that its service providers are based outside Luxembourg, without any physical presence in the country, not even a branch office.[190] The Parties submit that they have no local subsidiaries in Luxembourg, but source the required resources for their operations in Luxembourg from their respective business units based in France, on a project-by-project basis.[191] TSO, the Parties' competitor, is not established in Luxembourg either, but carries out projects in Luxembourg through its branch in Eastern France.[192] As TSO explains, "[*t]he company does not own dedicated assets in Luxembourg, but transfers when required its engineering trains and elevated platforms from France*."[193]

(168) It follows that, for a French competitor to carry out a catenary and overhead contact line project in Luxembourg, it does not need to undergo lengthy certification processes or to establish itself in the country. A French competitor could therefore participate in the customer's tenders on even grounds with the Parties and TSO, without any lead times and without the need of any investments beforehand. They would be able to carry out the project by temporarily relocating part of its installation equipment and personnel based in France.

(169) Third, CFL submitted that it has the ability to invite new entrants to its future tenders if necessary.[194]

(170) In fact, CFL mentions a further player, ETF, in addition to the Parties and TSO, which is based in France and is eligible for participating in its tenders for the largest catenaries and overhead contact line projects in Luxembourg.[195] CFL further confirms that the Parties, TSO and ETF all have the size and experience to participate in its tenders and to carry out projects in Luxembourg.[196]

(171) ETF confirms that it has recently carried out railway studies for CFL in Luxembourg, while it has also bid for catenary and overhead contact line projects, but has not won a tender so far. ETF notes, however, that through its involvement in railway studies in Luxembourg it is fostering its relations with CFL and maintains its strategy to enter the catenaries and overhead contact lines market in this country:*"*(…) this entry is very easy, especially as Luxembourg is*

188 See minutes of the call with CFL, 18.03.2022.
189 Replies to eQ2 to competitors in railway contact lines and catenary equipment, question B.B.5.
190 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.1.
191 Form CO, paragraph 924.
192 Minutes of the call with TSO, 24.03.2022.
193 *Ibid.*
194 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.13.
195 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.9.1.
196 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.6.

geographically very close to France. In addition, certifications are not required in Luxembourg if the undertaking has already been certified in another European country".[197]

(172) Besides ETF, CFL is also actively inviting other French service providers[198] who are interested in working in Luxembourg, through pilot projects, which aim at assessing the company's work and preparing them for taking up larger projects.

(173) As CFL explains, *"(...) pilot projects are carried out with new companies in order to assess the quality of the work and the project management of the company. If a company is interested in working in Luxembourg and can prove its qualification through SNCF, we are always open to start with a pilot project in order to realize larger projects after successful execution."*.[199]

(174) Such a pilot project is currently being finalized with another French service provider.[200] Upon successful execution of such pilot project, this service provider, being already certified by SNCF, will fulfil CFL's main selection criteria in order to participate in its tenders for catenary and overhead contact line projects.[201]

(175) It follows from the above that CFL will post-Transaction continue to have at least 3 providers, as before, and possibly, with additional entry, even 4 service providers that can participate in its tenders. Besides the Parties, TSO and ETF, there is a number of further service providers certified by SNCF, including Eiffage Rail, Alstom and C2F, who would be eligible to participate in CFL's tenders. Furthermore, both TSO and ETF do not expect a negative impact of the Transaction on the market in Luxembourg. TSO submitted in the market investigation that the Transaction will have no impact on prices and quality on the market for the installation and maintenance in Luxembourg.[202] ETF commented that *"*(...) the impact on Luxembourg is expected to remain limited"*.[203] The Commission therefore considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement, with respect to the market for installation and maintenance of catenaries and overhead contact lines in Luxembourg, neither on the overall market, nor on the narrowest possible market for long-distance rail in Luxembourg.

5.2.1.4. Austria, France and the Netherlands

(176) The Transaction also gives rise to affected markets as regards the installation and maintenance of catenaries and overhead contact lines in Austria and the Netherlands with respect to metropolitan rail. Bouygues is not active in the long-distance rail market in any of these countries. In France, there is an affected market

197 See minutes of the call with ETF, 24.03.2022; *Courtesy translation. Original text in French :*"(...) cette entrée est très facile d'autant plus que le Luxembourg est géographiquement très proche de la France. En outre, un agrément n'est pas requis au Luxembourg si l'entreprise a déjà été agréée dans un autre pays européen."*

198 See Table 5 below, for a list of the main competitors based in France who would be eligible for participating in CFL's tenders.

199 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.B.5.

200 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.11.

201 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.15.

202 Replies to eQ2 to competitors of railway contact lines and catenary equipment, question D.2.3.

203 Minutes of the call with ETF, 24.03.2022. *Courtesy translation. Original French version: "(…) *et l'impact pour le Luxembourg devrait également rester limité*."

with respect to long-distance rail. The Parties overlap in France as regards metropolitan rail, but such overlap does not give rise to an affected market. On all affected markets, the Parties' combined market shares remain at a moderate level of below 25% in 2021, even in the narrowest possible markets.[204]

Table 4: Estimates of the Parties' and their main competitors' market shares in Austria

Installation and maintenance of catenaries and OCL	2018		2019		2020		2021	
	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share
By customer type – Metropolitan rail								
Bouygues					[…]	[0-5]%	[…]	[10-20]%
Equans	[…]	[70-80]%	[…]	[80-90]%	[…]	[20-30]%	[…]	[5-10]%
Bouygues + Equans					*[…]*	*[20-30]%*	*[…]*	*[20-30]%*
Europten						[40-50]%		[40-50]%
Rhomberg						[5-10]%		[5-10]%
Matthei						[10-20]%		[10-20]%
Total Market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100.0%**

Source: Form CO, Table 65.

Table 5: Estimates of the Parties' and their main competitors' market shares in France

Installation and maintenance of catenaries and OCL	2018		2019		2020		2021	
	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share
By customer type – Long-distance rail								
Bouygues	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%
Equans	[…]	[5-10]%	[…]	[10-20]%	[…]	[5-10] %	[…]	[5-10]%
Bouygues + Equans	*[…]*	*[20-30]%*	*[…]*	*[30-40]%*	*[…]*	*[30-40]%*	*[…]*	*[20-30]%*
TSO Caténaires		[20-30]%		[20-30]%		[20-30]%		[20-30]%
ETF		[20-30]%		[20-30]%		[20-30]%		[20-30]%
Eiffage Rail		[10-20]%		[10-20]%		[10-20]%		[10-20]%
Alstom		[0-5]%		[0-5]%		[0-5]%		[0-5]%
C2F		[0-5]%		[0-5]%		[0-5]%		[0-5]%
Total Market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100.0%**

Source: Form CO, Table 67.

Table 6: Estimates of the Parties' and their main competitors' market shares in the Netherlands

Installation and maintenance of catenaries and OCL	2018		2019		2020		2021	
	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share	Turnover (€m)	Market share
By customer type – Metropolitan rail								
Bouygues	[…]	[20-30]%	[…]	[20-30]%	[…]	[40-50]%	[…]	[10-20]%
Equans	[…]	[10-20]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[0-5]%

[204] See Table 4 to Table 6 below.

Installation and maintenance of catenaries and OCL	2018		2019		2020		2021	
	Turn over (€m)	Market share	Turn over (€m)	Market share	Turn over (€m)	Market share	Turn over (€m)	Market share
Bouygues + Equans	*[…]*	*[30-40]%*	*[…]*	*[40-50]%*	*[…]*	*[50-60]%*	*[…]*	*[20-30]%*
Volkerrail		[20-30]%		[10-20]%		[20-30]%		[20-30]%
DuraVermeer		[20-30]%		[10-20]%		[20-30]%		[20-30]%
BAM		[10-20]%		[10-20]%		[5-10]%		[10-20]%
Strukton		[10-20]%		[10-20]%		[0-5]%		[5-10]%
Total Market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100.0%**

Source: Form CO, Table 69.

5.2.1.4.1. Notifying Party's arguments

(177) The Notifying Party submits that in the affected markets in Austria, France and The Netherlands, the combined entity will keep facing competition from a number of credible competitors post-Transaction, some of which will remain larger than the combined entity.[205]

(178) Furthermore, the Notifying Party submits that installers of catenaries and overhead contact lines mainly depend on the railway and urban infrastructure operators involved in the projects. In this respect, customers are knowledgeable and specialized professionals, able of exercising strong countervailing buyer power and bringing in new actors when they consider that the market is not competitive enough.[206]

(179) With respect to Austria, the Notifying Party further submits that it has only entered the market for the installation and maintenance of catenaries for metropolitan lines during the second semester of 2020, and is therefore a relatively new and small player in that market.[207]

(180) Regarding the Netherlands, the Notifying Party argues that it is not in direct competition with Equans, as Bouygues does not bid for tenders independently, but is active only as a subcontractor for other service providers.[208]

5.2.1.4.2. Commission's assessment

(181) The Parties' combined market share in the affected markets for installation and maintenance of catenaries and overhead contact lines in Austria, France and the Netherlands will remain at moderate levels of below 25%. The market share increment will remain low to moderate in all markets, ranging from [0-5]% in the Netherlands to [5-10]% in Austria.

(182) Furthermore, the Parties will continue facing strong competitors in all affected markets in Austria, France and the Netherlands, including competitors that currently hold higher market shares than the combined entity.

205 Form CO, paras. 653, 675, 708.
206 Form CO, paras. 655, 677, 710.
207 Form CO, para. 647.
208 Form CO, para. 703.

(183) In Austria, the Parties will continue facing competition from Europten ([30-40]%), Matthei ([10-20]%) and Rhomberg ([5-10]%). At least Europten achieves a higher market share than the Parties combined.

(184) In France, the Parties will continue facing competition from at least 5 further competitors, of which TSO ([20-30]%), ETF ([20-30]%) and Eiffage Rail ([10-20]%) achieve comparable or even higher market shares than the Parties combined.

(185) In the Netherlands, Volkerrail ([20-30]%) and Dura Vermeer ([20-30]%) achieve higher market shares than the Parties combined. The Parties will keep facing competition also from other well-established players, such as BAM ([10-20]%) and Strukton ([5-10]%).

(186) The market investigation confirmed that the above competitors are able to participate in tenders for the largest projects for installation and maintenance of catenaries and overhead contact lines.[209]

(187) As is apparent from the results of the market investigation, a significant majority of market participants share the view that the Transaction will have no negative impact and that these markets will remain sufficiently competitive post-Transaction.[210]

(188) The results of the market investigation further confirmed that the sourcing of installation and maintenance services for catenaries and overhead contact lines in these countries takes place through tenders.[211] The majority of customers in each of the countries in question who gave a reply, submitted that post-Transaction they would continue to have sufficient participation in their tenders.[212] The Commission therefore considers that customers in these markets have sufficient alternative choices to maintain the competitiveness of the markets.

(189) One of the customers in Austria submitted that the Parties are two out of its three main service providers in the installation and maintenance of catenaries and overhead contact lines for metropolitan railways.[213] This customer subsequently expects a negative impact of the Transaction with respect to prices and choice.[214] However, as explained above, this respondent's feedback is not confirmed by the rest of the customers in Austria, which submit that there are sufficient alternative service providers available, as well as sufficient participation in their tenders. Besides, this customer confirms that it would be able to invite new entrants to future tenders if necessary.[215]

(190) Based on the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of

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209 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.9.1. and replies to eQ2 to competitors, question C.7.1.

210 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.4, D.1. and replies to eQ2 to competitors, question C.2.2., D.1.

211 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.1 and replies to eQ2 to competitors, question C.1.

212 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.2.

213 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.4.

214 Replies to eQ1 to customers of railway contact lines and catenary equipment, question D.2.

215 Replies to eQ1 to customers of railway contact lines and catenary equipment, question C.13.

the EEA agreement with respect to the market for installation and maintenance of catenaries and overhead contact lines for metropolitan rail in Austria, and the Netherlands and for long-distance rail in France.

5.2.2. Non-horizontally affected markets – Catenary equipment (upstream) and installation and maintenance of catenaries and overhead contact lines (downstream)

(191) The Parties are both active on the market for the manufacture and supply of catenary equipment in the EEA, mainly for the metropolitan rail segment. The Parties' combined share as regards catenary equipment would however, remain low, with a combined market share of [0-5]% for the manufacture and supply of catenary equipment for long-distance rail in the EEA and a combined market share of [5-10]% for the manufacture and supply of catenary equipment for metropolitan rail in the EEA.[216]

(192) As shown in Table 1 above, the Parties' combined shares on the market for the installation and maintenance of catenaries and overhead contact lines are above 30% only in Belgium and Luxembourg.

(193) The Transaction therefore gives rise to vertically affected markets for the manufacture and supply of catenary equipment in the EEA upstream, and the installation and maintenance of catenaries and overhead contact lines in Belgium and Luxembourg downstream.

5.2.2.1. Notifying Party's arguments

(194) The Notifying Party considers the Parties' activities in the manufacture and supply of catenary equipment as marginal and claim that they are not among the main competitors in the EEA or in any of the countries in which they overlap.[217]

(195) The Notifying Party further submits that catenary equipment is, to a large extent, purchased by customers themselves through their central purchasing body, while installation works are subject to separate calls for tenders. The vertical link between the two activities therefore appears limited.

5.2.2.2. Commission's assessment

(196) The Commission notes that both Parties are already vertically integrated in the markets for the manufacture and supply of catenary equipment on the one hand, and the installation and maintenance of catenaries and overhead contact lines on the other hand. The Commission will therefore assess under the legal framework set out in paragraph (119)-(122) above whether the Transaction is likely to change the Parties' ability and incentives to pursue a foreclosure strategy. In the first place, the merged entity could engage in input or customer foreclosure as a result of the vertical link between both markets (Sections 5.2.2.2.1 and 5.2.2.2.2). In the second place, the merged entity could foreclose rivals by means of tying or bundling or other exclusionary practices (Section 5.2.2.2.3).

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216 Form CO, para. 351; Annex 6.2.4.3.1.

217 *Idem.*

5.2.2.2.1. Input foreclosure

(197) The Commission considers that the merged entity will not have the ability to foreclose their competitors in the downstream market from access to catenary equipment. As mentioned in paragraph (191) above, the Parties' combined share on the upstream market for the manufacture and supply of catenary equipment will remain below 5% on the narrowest possible markets for catenary equipment for the metropolitan rail and for long-distance rail in the EEA. There is a number of competitors active in the EEA with a higher market share than the merged entity, including Siemens ([10-20]%), Rail Power Systems ([10-20]%), Alstom ([10-20]%), Galland ([10-20]%) and RIBE ([5-10]%). The Parties' competitors on the downstream market for the installation and maintenance of catenaries and overhead contact lines in both Belgium and Luxembourg will therefore continue to have access to a sufficient number of catenary equipment suppliers post-Transaction.

(198) Moreover, the Commission considers that the merged entity will not have the incentive to stop supplying catenary equipment to their downstream rivals in Belgium and Luxembourg. Given the merged entity's small market shares in the upstream market, its rivals on the downstream market would still have access to at least 95% of input sources for catenary equipment in the EEA. It is therefore unlikely that an input foreclosure strategy by the merged entity would result in its downstream rivals winning less tenders for installation and maintenance projects, due to the lack of access to catenary equipment input.

(199) Furthermore, the merged entity's loss from not supplying catenary equipment, will not necessarily be recovered in the downstream market, as installation and maintenance services are sourced through tenders (see, e.g., paragraphs (137) and (188) above), separately from the sourcing of catenary equipment. In this regard, if the Parties do not win the tender in the downstream market, a foreclosure strategy will only mean that they would also forego the opportunity to supply catenary equipment to their downstream rival that won the tender. Conversely, by supplying its downstream competitors with catenary equipment, the merged entity, might still (indirectly) benefit, even if it would lose the bid on the downstream market. Hence, the likelihood that the merged entity might engage in an input foreclosure strategy appears remote.

(200) Furthermore, the results of the market investigation confirmed that the Parties are not an important source of catenary equipment input, and that the impact of any input foreclosure strategy on the Parties' customers for the supply of catenary equipment would be limited.[218]

5.2.2.2.2. Customer foreclosure

(201) Similarly, it appears unlikely that the merged entity would have the ability to engage in a customer foreclosure strategy. Although the Parties have significant combined market shares in the downstream market in Belgium and Luxembourg, catenary equipment suppliers are active on an EEA level.[219] Even if the merged entity were able to foreclose its upstream rivals from customers in Belgium and

[218] Replies to eQ2 to competitors of railway contact lines and catenary equipment, questions C.15.

[219] See paragraph (36).

Luxembourg, given the limited size of these markets,[220] the merged entity's rivals in the upstream market would still have access to a sufficient customer base in the rest of the EEA.

(202) In any case, on an EEA level, the merged entity's market share in the installation and maintenance of catenaries and overhead contact lines would remain at [10-20]%.[221] As explained in paragraph (36), the majority of respondents in the market investigation replied that they source catenary equipment on an EEA-wide, or even worldwide level.[222] It follows that post-Transaction, competing catenary equipment suppliers will have a sufficient customer base to address in the EEA.

(203) A significant number of customers for installation and maintenance services for catenaries and overhead contact lines, including CFL and Infrabel, the national railway operators and main customers in Belgium and Luxembourg respectively, submitted that they typically do not outsource the purchase of catenary equipment to their installation and maintenance providers, but rather source it independently themselves, directly from catenary equipment suppliers, and separately from their tenders for installation and maintenance services.[223] It follows that the customer base for catenary equipment suppliers is not limited only to the installation and maintenance service providers on the downstream market, but they also sell directly to railway infrastructure operators. This further limits the merged entity's importance as a customer for catenary equipment in the EEA, and its ability to profit from a customer foreclosure strategy.

(204) Absent the ability to foreclose its upstream rivals from access to customers, an assessment of the merged entity's' incentives do to so is not necessary. In any case, the Commission considers that the combined entity would post-Transaction not have the incentive to stop sourcing catenary equipment from third suppliers, given that its own activity on that market is marginal and its output of catenary equipment is unlikely sufficient to cover its own demand.

(205) Finally, the results of the market investigation confirmed that the impact of any customer foreclosure strategy on the Parties' suppliers would be limited.[224] This is because, the Parties' share of demand for catenary equipment from competing suppliers is limited (the Parties' combined market share on the downstream market being [10-20]% and part of their demand being supplied in-house). Moreover, as mentioned in paragraph (203) above, customers of catenary equipment that also source installation and maintenance services for catenaries and overhead contact lines, source such equipment themselves and do not outsource its purchase to their installation and maintenance service providers.

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220 See Form CO, Table 63: Belgium and Luxembourg combined represent less than 1% of the EEA-wide market for installation and maintenance of catenaries and overhead contact lines.

221 Form CO, Table 20.

222 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.2. and replies to eQ2 to competitors, question B.A.2.

223 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.2.1.

224 Replies to eQ2 to competitors of railway contact lines and catenary equipment, questions C.16, C.16.1, C.16.2, D.3.

5.2.2.2.3. Tying and bundling

(206) Given that the national railway infrastructure operators in both Belgium and Luxembourg submitted that they typically source catenary equipment directly from catenary equipment suppliers and separately from their tenders for installation and maintenance services,[225] the Commission further assesses whether the Transaction could give rise to foreclosure of the merged entity's rivals on the market for the manufacture and supply of catenary equipment, through bundling of the combined entity's equipment and installation offering to railway infrastructure operators.

(207) In this regard, the Commission considers that the merged entity will not have the ability to foreclose its rivals in the market for the manufacture and supply of catenary equipment, by offering their catenary and overhead contact line installation and maintenance services to customers only in combination with their own catenary equipment. Both CFL in Luxembourg and a majority of railway infrastructure operators in Belgium, including Infrabel, replied in the market investigation that they procure catenary equipment separately from the tender for installation and maintenance services.[226] Moreover, both CFL and Infrabel submitted that the award of an installation and maintenance contract to a given company does not constitute an advantage for the award of the catenaries equipment supply contract.[227] As Infrabel noted, there is *"no link between the tender procedures."*[228]

(208) Absent the ability to foreclose their rivals in the market for the manufacture and supply of catenary equipment, via tying or bundling practices, an assessment of the merged entity's incentives do to so is not necessary. In any case, the Commission considers that the merged entity would post-Transaction not have the incentive to bundle its offering of installation and maintenance services with catenary equipment, given that its activity on the market for the manufacture and supply of catenary equipment is limited and its output of catenary equipment is unlikely sufficient to cover its own demand. The merged entity would thus be dependent on supplies from competing catenary equipment suppliers, such that a foreclosure strategy could invite retaliation and damage the interests of the merged entity.

5.2.2.3. Conclusion on non-horizontal effects

(209) In view of the above, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement as a result of the vertical or conglomerate relationship between the Parties' activities in the manufacture and supply of catenary equipment in the EEA, on the one hand, and the Parties' activities in the installation and maintenance of catenaries and overhead contact lines in Belgium and Luxembourg, on the other hand.

225 Replies to eQ1 to customers of railway contact lines and catenary equipment, question B.A.2.1.
226 Replies to eQ1 to customers of railway contact lines and catenary equipment, questions C.16, C.16.1.
227 Replies to eQ1 to customers of railway contact lines and catenary equipment, questions C.17.
228 Replies to eQ1 to customers of railway contact lines and catenary equipment, questions C.17.1.

5.3. Electrical engineering services

(210) Regarding the provision of electrical engineering services, the Transaction gives rise to affected markets only in France, both at national and/or regional, *i.e.*, narrower than national, level in the following markets:

- the markets for the provision of electrical engineering services including both installation and maintenance services
  - in the telecommunications sector (overall and fixed line);
  - for power lines: high-voltage (overall, overhead lines, and underground lines) and medium/low-voltage (underground lines);
  - for substations;
  - for public lighting;
- the markets for the provision of electrical installation services
  - in the telecommunications sector (overall and fixed line);
  - for power lines: high-voltage (overall, overhead lines and underground lines) and medium/low-voltage (overall and underground lines);
  - for substations;
  - for public lighting;
- the markets for the provision of electrical maintenance services
  - in the telecommunications sector (fixed line only);
  - in the civil nuclear sector.

5.3.1. Horizontally affected markets

5.3.1.1. Electrical engineering services in the telecommunications sector

5.3.1.1.1. Market shares

(211) As regards electrical engineering services for customers in the telecommunications sector, the Transaction leads to affected markets only at regional level in France. In the market for engineering services for all telecommunication networks, when considering installation and maintenance services together, regional markets would be affected in the regions of Nouvelle Aquitaine and Pays de la Loire. When considering only installation services, markets would be affected in the regions of Hauts-de-France, Normandie, Nouvelle Aquitaine, and Pays de la Loire. In the potential narrower markets for fixed telecommunications networks, there would be affected markets in the regions of Hauts-de-France, Normandie, Nouvelle Aquitaine, and Pays de la Loire for installation and maintenance services considered together, as well as for installation services considered separately. In the potential market for maintenance services for fixed telecommunication networks, the market would be affected only at regional level in Nouvelle Aquitaine.

Table 7: Estimates of the Parties' market shares in engineering services in the telecommunications sector (2019-2021)

Segment and geographic scope	2021			2020			2019		
	BYS	EQS	*comb*	BYS	EQS	*comb*	BYS	EQS	*comb*
All telecommunication networks (installation and maintenance)									
Nouvelle Aquitaine	[20-30]%	[10-20]%	*[30-40]%*	[10-20]%	[10-20]%	*[20-30]%*	[10-20]%	[10-20]%	*[20-30]%*
Pays de la Loire	[20-30]%	[0-5]%	*[20-30]%*	[10-20]%	[0-5]%%	*[10-20]%*	[20-30]%	[0-5]%	*[20-30]%*
All telecommunication networks (installation only)									
Hauts-de-France	[10-20]%	[0-5]%	*[20-30]%*	[20-30]%	[0-5]%%	*[20-30]%*	[20-30]%	[0-5]%	*[20-30]%*
Normandie	[20-30]%	[0-5]%	*[20-30]%*	[10-20]%	[0-5]%%	*[10-20]%*	[5-10]%	[0-5]%	*[10-20]%*
Nouvelle Aquitaine	[20-30]%	[10-20]%	*[30-40]%*	[10-20]%	[10-20]%	*[20-30]%*	[10-20]%	[10-20]%	*[30-40]%*
Pays de la Loire	[30-40]%	[0-5]%	*[30-40]%*	[10-20]%	[0-5]%%	*[10-20]%*	[20-30]%	[0-5]%	*[20-30]%*
Fixed telecommunication networks (installation and maintenance)									
Hauts-de-France	[10-20]%	[0-5]%	*[20-30]%*	[20-30]%	[0-5]%%	*[20-30]%*	[20-30]%	[0-5]%	*[20-30]%*
Normandie	[20-30]%	[0-5]%	*[20-30]%*	[10-20]%	[0-5]%%	*[10-20]%*	[10-20]%	[0-5]%	*[10-20]%*
Nouvelle Aquitaine	[20-30]%	[10-20]%	*[40-50]%*	[10-20]%	[10-20]%	*[30-40]%*	[20-30]%	[10-20]%	*[30-40]%*
Pays de la Loire	[20-30]%	[0-5]%	*[30-40]%*	[10-20]%	[0-5]%%	*[10-20]%*	[20-30]%	[0-5]%	*[30-40]%*
Fixed telecommunication networks (installation only)									
Hauts-de-France	[10-20]%	[0-5]%	*[20-30]%*	[20-30]%	[0-5]%%	*[20-30]%*	[30-40]%	[0-5]%	*[30-40]%*
Normandie	[20-30]%	[0-5]%	*[20-30]%*	[10-20]%	[0-5]%%	*[20-30]%*	[10-20]%	[0-5]%	*[10-20]%*
Nouvelle Aquitaine	[20-30]%	[10-20]%	*[40-50]%*	[20-30]%	[10-20]%	*[30-40]%*	[20-30]%	[10-20]%	*[40-50]%*
Pays de la Loire	[30-40]%	[0-5]%	*[30-40]%*	[10-20]%	[0-5]%%	*[10-20]%*	[30-40]%	[0-5]%	*[30-40]%*
Fixed telecommunication networks (maintenance only)									
Nouvelle Aquitaine	[5-10]%	[20-30]%	*[30-40]%*	[0-5]%%	[10-20]%	*[20-30]%*	[0-5]%%	[10-20]%	*[10-20]%*

Source: Annex to response to RFI 11 relating to the Parties' market shares 2019-2021.

5.3.1.1.2. Notifying Party's arguments

(212) The Notifying Party considers that the Transaction would not raise serious doubts as to its compatibility with the internal market with regard to electrical engineering services for customers in the telecommunications sector and any narrower plausible markets, for the following reasons:

(213) With regard to electrical engineering services for telecommunication networks, the Notifying Party argues that in all regions but one (*i.e.*, Nouvelle Aquitaine[229]), the market share increment would be minimal (between [0-5]%)[230] and that the combined entity will continue facing competition from a number of large or well-established competitors.[231]

229 Form CO, paragraphs 570 et seq.

230 Form CO, paragraphs 558, 565, 582.

231 Form CO, paragraphs 558, 565, 572, 577, 582.

(214) Furthermore, the Parties do not consider themselves as close competitors for electrical engineering services for fixed telecommunication networks. While Bouygues' subsidiary Axione is active in deployment of public initiative networks[232] both as a network constructor and as a network operator, Equans' Ineo Infracom is a pure network constructor, mainly, but not only, as a subcontractor to private telecom network operators such as [Information regarding customer].[233]

(215) In any event, a large share of the Notifying Party's activities in the telecommunication networks segment in the affected regions is dedicated to the roll-out of optical fibre (primarily as FttH[234]) networks, representing a share between [Activity breakdown] of Bouygues' infrastructure-related revenues. As the roll-out of optical fibre in France is expected to be completed by around 2025 and because all installation contracts have already been awarded, the Notifying Party submits that the corresponding share of the market is no longer addressable.

5.3.1.1.3. Commission's assessment

(216) First, the Parties' combined market shares remain below 40% in all regional markets but Nouvelle Aquitaine. In Hauts-de-France and Normandie, the combined shares are even below [20-30]%, except for the narrowest plausible market for installation services for fixed telecommunication networks in Normandie, where the combined share remains below [30-40]%. However, even for Nouvelle Aquitaine, where the Parties' combined shares slightly exceed [40-50]%, the Transaction does not raise serious doubts for the reasons below.

(217) Second, the results of the market investigation confirmed that the Parties will continue facing competition from a large number of competitors in each affected regional market. Competitors offering both installation and maintenance services for all types of telecommunication networks include entities of large construction groups including Axians (Vinci) and Eiffage as well as a number of specialised providers such as Sogetrel, Circet, Scopelec, SPIE, Snef, Resonance (Firalp group), Cegelec and many others.[235] In terms of market shares for fixed telecom networks at national level, the Parties' next closest competitors in installation services are Sogetrel ([10-20]%), Circet ([10-20]%) and Scopelec ([5-10]%), all less than 10 percentage points behind the Parties. will remain below SPIE's ([10-20]%), Circet's ([10-20]%) and Sogetrel's ([10-20]%).[236] Even at regional level, and in the narrowest plausible markets for the installation of fixed telecommunication networks in Nouvelle Aquitaine, where the Parties' combined share exceeds 40%, the Parties would continue to face at least SPIE ([10-20]%), Scopelec ([10-20]%), Circet ([5-10]%), Sade ([5-10]%), Sogetrel ([0-5]%) and others ([10-20]%).[237] In

232 See footnote 116 above.

233 Form CO, paragraphs 188 et seq. and 515.

234 "Fibre to the home" (FttH) is a form of broadband network architecture and designates the configuration whereby the fibre is being deployed until the user's home. The general term "FttX" describes the various deployment configurations which vary with regard to the distance between the last optical fibre section and the end-user.

235 Replies to eQ3 to customers of electrical engineering services, question 18.2.

236 Form CO, Annex 6.2.1.3.3.

237 Annex to response to RFI 11 relating to competitors' market shares 2019-2021.

the other affected regions and in the broader market for installation and maintenance services combined, competitors' shares are even higher.[238]

(218) Third, the results of the market investigation further confirmed that the Parties are not seen as particularly close competitors. None of the respondents listed either Party as the closest competitor of the other Party. Based on market feedback, the closest competitor to Bouygues in the telecommunication networks sector, for any service and network type, is Vinci, followed by SPIE. The closest competitor to Equans is Vinci, followed by Eiffage and Circet.[239]

(219) Fourth, respondents to the Commission's investigation expressing a view in this regard also confirmed that customers have a strong influence on their procurement negotiations through competitive bidding processes. One of the respondents explains in this regard that "*tendering and negotiation procedures are driven and directed by the customer* [in the] *telecom networks market, specifically with regard to price*".[240]

(220) Fifth, market participants unanimously confirmed the declining trend of the market regarding installation services for optical fibre deployment more specifically, in line with the national roll-out plan for optical fibre in France, which is expected to come to an end in 2025 or 2026.[241] [Business strategy].[242] The market for electrical engineering services in the telecommunications sector can therefore be expected to undergo significant structural changes in the coming years.

(221) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement with respect to the markets for electrical engineering services in the telecommunication networks sector in France, both at national and at regional level, even in the possible narrower segments regarding fixed telecommunications networks and regardless of whether installation and maintenance services are considered together or separately.

5.3.1.2. Electrical engineering services in the power lines sector

5.3.1.2.1. Market shares

(222) In electrical engineering services for customers in the power lines sector, the Transaction leads to affected markets at regional level in France in the regions of Bourgogne-Franche-Comté, Bretagne, Centre-Val de Loire, Hauts-de-France, Ile-de-France, Occitanie, Pays de la Loire and Provence Alpes Côte d'Azur, as shown in Table 8 below.

238 *Ibid*. Given the multitude of affected markets at regional level, this decision does not reproduce competitors' market shares exhaustively.

239 Replies to eQ4 to competitors of electrical engineering services, questions 22 and 23.

240 Replies to eQ4 to competitors of electrical engineering services, question 27.

241 Replies to eQ4 to competitors of electrical engineering services, question 31, and replies to eQ3 to customers of electrical engineering services, question 29.

242 Response to question 8 of RFI 3.

Table 8: Estimates of the Parties' market shares in engineering services in the power lines sector (2019-2021)

Segment and geographic scope	2021			2020			2019		
	BYS	EQS	*comb*	BYS	EQS	*comb*	BYS	EQS	*comb*
Power lines high-voltage (installation and maintenance)									
Bourgogne-Franche-Comté	[10-20]%	[10-20]%	*[30-40]%*	[0-5]%	[0-5]%	*[0-5]%*	[0-5]%	[0-5]%	*[0-5]%*
Centre-Val de Loire	[20-30]%	[5-10]%	*[30-40]%*	[0-5]%	[0-5]%	*[0-5]%*	[0-5]%	[0-5]%	*[0-5]%*
Ile-de-France	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[20-30]%	*[30-40]%*	[20-30]%	[5-10]%	*[30-40]%*
Occitanie	[20-30]%	[5-10]%	*[30-40]%*	[10-20]%	[0-5]%	*[20-30]%*	[5-10]%	[5-10]%	*[10-20]%*
PACA	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[10-20]%	*[30-40]%*	[5-10]%	[5-10]%	*[10-20]%*
Power lines high-voltage (installation only)									
Bourgogne-Franche-Comté	[10-20]%	[20-30]%	*[30-40]%*	[0-5]%	[0-5]%	*[0-5]%*	[0-5]%	[0-5]%	*[0-5]%*
Centre-Val de Loire	[30-40]%	[5-10]%	*[30-40]%*	[0-5]%	[0-5]%	*[0-5]%*	[5-10]%	[0-5]%	*[5-10]%*
Ile-de-France	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[20-30]%	*[40-50]%*	[20-30]%	[10-20]%	*[30-40]%*
Occitanie	[20-30]%	[5-10]%	*[30-40]%*	[20-30]%	[0-5]%	*[20-30]%*	[5-10]%	[5-10]%	*[10-20]%*
PACA	[20-30]%	[5-10]%	*[30-40]%*	[10-20]%	[10-20]%	*[30-40]%*	[5-10]%	[10-20]%	*[10-20]%*
Power lines high-voltage - overhead lines (installation and maintenance)									
Bourgogne-Franche-Comté	[10-20]%	[20-30]%	*[30-40]%*	[0-5]%	[0-5]%	*[0-5]%*	[0-5]%	[0-5]%	*[0-5]%*
Centre-Val de Loire	[20-30]%	[5-10]%	*[30-40]%*	[0-5]%	[0-5]%	*[0-5]%*	[0-5]%	[0-5]%	*[0-5]%*
Occitanie	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[0-5]%	*[10-20]%*	[0-5]%	[5-10]%	*[5-10]%*
PACA	[10-20]%	[10-20]%	*[20-30]%*	[10-20]%	[20-30]%	*[30-40]%*	[5-10]%	[5-10]%	*[10-20]%*
Power lines high-voltage - overhead lines (installation only)									
Bourgogne-Franche-Comté	[20-30]%	[20-30]%	*[40-50]%*	[0-5]%	[0-5]%	*[0-5]%*	[0-5]%	[0-5]%	*[0-5]%*
Centre-Val de Loire	[30-40]%	[5-10]%	*[30-40]%*	[0-5]%	[0-5]%	*[0-5]%*	[0-5]%	[0-5]%	*[0-5]%*
Occitanie	[20-30]%	[10-20]%	*[30-40]%*	[20-30]%	[5-10]%	*[20-30]%*	[0-5]%	[5-10]%	*[5-10]%*
PACA	[10-20]%	[10-20]%	*[20-30]%*	[10-20]%	[20-30]%	*[30-40]%*	[10-20]%	[5-10]%	*[10-20]%*
Power lines high-voltage - underground lines (installation and maintenance)									
Hauts-de-France	[10-20]%	[0-5]%	*[20-30]%*	[0-5]%	[5-10]%	*[5-10]%*	[5-10]%	[0-5]%	*[5-10]%*
Ile-de-France	[20-30]%	[5-10]%	*[20-30]%*	[20-30]%	[10-20]%	*[30-40]%*	[40-50]%	[10-20]%	*[50-60]%*
Occitanie	[30-40]%	[0-5]%	*[40-50]%*	[20-30]%	[0-5]%	*[30-40]%*	[5-10]%	[5-10]%	*[10-20]%*
PACA	[20-30]%	[5-10]%	*[30-40]%*	[10-20]%	[5-10]%	*[10-20]%*	[5-10]%	[10-20]%	*[10-20]%*
Power lines high-voltage - underground lines (installation only)									
Hauts-de-France	[10-20]%	[0-5]%	*[20-30]%*	[0-5]%	[5-10]%	*[5-10]%*	[5-10]%	[0-5]%	*[5-10]%*
Ile-de-France	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[10-20]%	*[30-40]%*	[50-60]%	[10-20]%	*[70-80]%*
Occitanie	[40-50]%	[0-5]%	*[40-50]%*	[20-30]%	[0-5]%	*[30-40]%*	[5-10]%	[5-10]%	*[10-20]%*
PACA	[20-30]%	[5-10]%	*[30-40]%*	[10-20]%	[5-10]%	*[10-20]%*	[5-10]%	[10-20]%	*[20-30]%*

Segment and geographic scope	2021			2020			2019		
	BYS	EQS	*comb*	BYS	EQS	*comb*	BYS	EQS	*comb*
Power lines medium/low voltage (installation only)									
Bretagne	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[10-20]%	*[20-30]%*
Occitanie	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[0-5]%	*[10-20]%*	[10-20]%	[5-10]%	*[20-30]%*
Pays de la Loire	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[5-10]%	*[10-20]%*	[10-20]%	[5-10]%	*[20-30]%*
Power lines medium/low voltage - underground lines (installation and maintenance)									
Bretagne	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[10-20]%	*[20-30]%*
Nouvelle Aquitaine	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[10-20]%	*[20-30]%*
Occitanie	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[0-5]%	*[20-30]%*	[10-20]%	[5-10]%	*[20-30]%*
Pays de la Loire	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[5-10]%	*[10-20]%*	[10-20]%	[5-10]%	*[20-30]%*
Power lines medium/low voltage - underground lines (installation only)									
Bretagne	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[5-10]%	*[20-30]%*	[20-30]%	[10-20]%	*[30-40]%*
Nouvelle Aquitaine	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[10-20]%	*[20-30]%*	[10-20]%	[10-20]%	*[20-30]%*
Occitanie	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[0-5]%	*[20-30]%*	[10-20]%	[5-10]%	*[20-30]%*
Pays de la Loire	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[5-10]%	*[10-20]%*	[10-20]%	[5-10]%	*[20-30]%*

Source: Annex to response to RFI 11 relating to the Parties' market shares 2019-2021.

5.3.1.2.2. Notifying Party's arguments

(223) The Notifying Party considers that the Transaction would not raise serious doubts as to its compatibility with the internal market with regard to electrical engineering services for customers in the power lines sector and any narrower plausible markets, for the following reasons:

(224) With regard only to medium- and low-voltage power lines, the Notifying Party argues that in all affected regions, the combined market share would remain below or only slightly above [20-30]% and that for both medium- and low- as well as high-voltage power lines, the combined entity would keep facing competition from a number of national and regional players.[243]

(225) Regarding high-voltage power lines, the Notifying Party argues that an assessment at regional level would not be appropriate as competitive conditions are driven at national level, mainly by RTE, the French national high-voltage grid operator. At national level, the high-voltage power lines installation and maintenance market would not be affected.[244]

(226) Moreover, the market for the installation of high-voltage power lines would be highly concentrated on the demand side with very few large and sophisticated customers such as RTE capable of exerting strong countervailing buyer power through their contracting process or by switching to alternative service providers.[245]

243 Form CO, paragraphs 602 et seq., 607 et seq., 612 et seq. And 617 et seq.
244 Form CO, paragraphs 213 and 218.
245 Form CO, paragraph 220.

5.3.1.2.3. Commission's assessment

(227) *First*, as regards market shares, in the vast majority of the affected markets the Parties' combined market share is below 40% and in most markets even below or around [20-30]%. In all markets, except the market for high-voltage overhead power lines, the share increment remains below 10%. In addition, the Parties' individual and combined market shares fluctuate significantly from one region to another and from one year to another. This fluctuation reflects the characteristics of bidding markets in which the award or the end of a one-off project can shift market shares significantly. This is in particular the case for overhead high-voltage power lines services in Bourgogne-Franche-Comté, where the Parties' combined shares varied by [30-40] percentage points between 2019 and 2021, and for underground high-voltage power lines in Occitanie, where the Parties' combined shares varied by [20-30] percentage points between 2019 and 2021.[246]

(228) *Second*, the results of the market investigation confirmed that power lines customers have a large number of providers at hand (on average more than 5 service providers per customer, irrespective of customer size).[247] Competitors providing both installation and maintenance services for all types of power lines and power line architecture (i.e. over- and underground) include entities of large groups including Eiffage, SPIE and Vinci as well as a number of specialised providers such as Fayat, Firalp group, and many others.[248] At national level, Vinci's, Eiffage's and SPIE's shares amount to respectively [20-30]%, [10-20]% and [5-10]% for high-voltage overhead line installation, respectively [10-20]%, [10-20]% and [10-20]% for high-voltage underground installation, and respectively [5-10]%, [5-10]% and [5-10]% for medium- and low-voltage underground installation.[249] Even in regions where the Parties' combined shares are higher, such as Bourgogne-Franche-Comté for overhead high-voltage power lines installation or Occitanie for underground high-voltage power lines installation, the Parties continue to face at least Vinci (Bourgogne-Franche-Comté: [10-20]%; Occitanie: [5-10]%), Eiffage (Bourgogne-Franche-Comté: [5-10]%; Occitanie: [10-20]%), SPIE (only Bourgogne-Franche-Comté: [5-10]%) and Serpollet (only Occitanie: [10-20]%) with respective market shares around or above 10%.[250]

(229) *Third*, the Parties' position for high-voltage installation services, in particular, in a given region for a given year depends primarily on projects assigned by RTE, the French national DSO. RTE contracts service providers via tender procedures for national framework contracts, under which it then assigns specific installation projects on a regional basis.[251] For overhead high-voltage power lines installation, RTE has contracted [Information regarding customer] service providers under the relevant framework contract, including the Parties. It is for this reason that the Parties' combined shares fluctuate widely over the course of past years, e.g., in regions such as Bourgogne-Franche-Comté and Centre-Val de Loire, where shares increased from respectively [0-5]% and [0-5]% to [30-40]% and [40-50]% between

246 See Table 8 above.

247 Replies to eQ3 to customers of electrical engineering services, question 18.3.

248 Replies to eQ3 to customers of electrical engineering services, question 18.3.

249 Response to question 1 of RFI 11.

250 Form CO, Annex 6.2.1.3.3. and Annex to response to RFI 11 relating to competitors' market shares 2019-2021.

251 Form CO, paragraphs 213 and 221 and replies to eQ3 to customers of electrical engineering services, questions 23 and 24.1.

2020 and 2021.[252] The results of the market investigation confirmed that customers have significant bargaining power through competitive bidding processes in which price constitutes the main award criterion.[253] Indeed, customers are sophisticated infrastructure operators capable of defining contractual conditions to suit their needs. In this regard, a major power lines customer noted in response to the market investigation that while the Parties are important service providers for reasons of their service quality "*they still have numerous competitors*".[254] Another major power lines customer noted that "**the two Parties are essential for [the company's] development. But their market position is not hegemonic (3% of our national demand)*".[255]

(230) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement with respect to the markets for electrical engineering services in the power lines sector in France, both at national and at regional level, even in the possible narrower segments regarding high-voltage and medium/low-voltage power lines, as well as per different type of power lines, and regardless of whether installation and maintenance services are considered together or separately.

5.3.1.3. Electrical engineering services in the substations sector

5.3.1.3.1. Market shares

(231) In electrical engineering services for customers in the substations sector, the Transaction leads to affected markets at national and regional level in France, as shown in Table 9 below.

Table 9: Estimates of the Parties' market shares in engineering services for substations (2019-2021)

Segment and geographic scope	2021			2020			2019		
	BYS	EQS	*comb*	BYS	EQS	*comb*	BYS	EQS	*comb*
Substations (installation and maintenance)									
Ile-de-France	[0-5]%	[20-30]%	*[20-30]%*	[0-5]%	[10-20]%	*[20-30]%*	[0-5]%	[10-20]%	*[20-30]%*
Nouvelle Aquitaine	[5-10]%	[20-30]%	*[20-30]%*	[5-10]%	[20-30]%	*[20-30]%*	[0-5]%	[20-30]%	*[20-30]%*
PACA[256]	[10-20]%	[20-30]%	*[30-40]%*	[0-5]%	[10-20]%	*[10-20]%*	[0-5]%	[10-20]%	*[20-30]%*
Substations (installation)									
France	[5-10]%	[20-30]%	*[20-30]%*	[5-10]%	[10-20]%	*[20-30]%*	[5-10]%	[20-30]%	*[20-30]%*
Auvergne-Rhône-Alpes	[5-10]%	[20-30]%	*[30-40]%*	[5-10]%	[20-30]%	*[20-30]%*	[10-20]%	[20-30]%	*[30-40]%*
Centre-Val de Loire	[5-10]%	[20-30]%	*[30-40]%*	[5-10]%	[20-30]%	*[30-40]%*	[0-5]%	[30-40]%	*[40-50]%*
Grand Est	[5-10]%	[20-30]%	*[30-40]%*	[20-30]%	[30-40]%	*[50-60]%*	[5-10]%	[40-50]%	*[50-60]%*

252 See Table 8 above, e.g. for high-voltage power lines - overhead lines (installation only). A similar picture can be observed for other high-voltage power lines markets and regions.

253 Replies to eQ3 to customers of electrical engineering services, questions 21 and 22.

254 Replies to eQ3 to customers of electrical engineering services, question 20.1.

255 Replies to eQ3 to customers of electrical engineering services, question 20.1. *Courtesy translation. Original French version: « *Ces 2 prestataires sont essentiels pour soutenir le développement de [entreprise]. Mais leurs positions ne sont pas hégémoniques (3% de part de nos marchés au niveau national).* »

256 Provence-Alpes-Côte d'Azur.

Segment and geographic scope	2021			2020			2019		
	BYS	EQS	*comb*	BYS	EQS	*comb*	BYS	EQS	*comb*
Hauts-de-France	[10-20]%	[10-20]%	*[20-30]%*	[10-20]%	[10-20]%	*[30-40]%*	[5-10]%	[5-10]%	*[10-20]%*
Ile-de-France	[0-5]%	[30-40]%	*[30-40]%*	[5-10]%	[30-40]%	*[30-40]%*	[0-5]%	[40-50]%	*[40-50]%*
Nouvelle Aquitaine	[5-10]%	[30-40]%	*[40-50]%*	[5-10]%	[30-40]%	*[40-50]%*	[0-5]%	[30-40]%	*[30-40]%*
Occitanie	[5-10]%	[10-20]%	*[20-30]%*	[5-10]%	[10-20]%	*[10-20]%*	[0-5]%	[10-20]%	*[20-30]%*
Pays de la Loire	[5-10]%	[10-20]%	*[20-30]%*	[0-5]%	[10-20]%	*[10-20]%*	[0-5]%	[10-20]%	*[10-20]%*
PACA	[10-20]%	[30-40]%	*[50-60]%*	[5-10]%	[10-20]%	*[20-30]%*	[0-5]%	[20-30]%	*[20-30]%*

Source: Annex to response to RFI 11 relating to the Parties' market shares 2019-2021.

5.3.1.3.2. Notifying Party's arguments

(232) The Notifying Party argues that the combined market share remains moderate, that the market share increment is low in the vast majority of affected markets, both at national and at regional level, and that the fragmented market features a number of long-established competitors belonging to large construction groups or that are highly specialised.

(233) The Notifying Party argues further that the main customers are public infrastructure operators (TSOs, DSOs, and railway operators, such as RTE, Enedis and SNCF), *i.e.*, large and sophisticated companies capable of exerting strong countervailing buyer power through public tenders, thereby leaving little margin of manoeuvre for the service provider.[257]

5.3.1.3.3. Commission's assessment

(234) The Commission's assessment in this Section applies to both installation and maintenance services considered together, as well as installation services considered separately.

(235) First, as can be seen in Table 9 above, in the large majority of potential markets, the Parties' combined market share is below 40%. Also, in the large majority of these markets the share increment remains below 10%.

(236) One customer submitted that that the Parties' combined market share would enable them to employ a more aggressive commercial strategy for a sustained period of time, which smaller competitors would be unable to follow, with the result that smaller competitors might ultimately be forced to leave the market.[258] However, this concern, which in essence is one of predatory pricing, is premised on the existence of market power for the predator.[259] The Commission notes that the merged entity's market position will remain moderate post-Transaction and the merged entity will continue to face competition from subsidiaries of large groups such as Vinci, Fayat and Eiffage, who would be able to sustain a temporary price decrease and thereby render any such attempt by the Parties unprofitable. Absent

257 Form CO, paragraphs 590-592.

258 Reply to eQ3 to customers of electrical engineering services, question 31.1.

259 Case C-62/86, AKZO v Commission, ECLI:EU:C:1991:286; Case C-202/07, France Télécom v Commission, ECLI:EU:C:2009:214.]

indication of the Parties' market power in a market where they are active, the Commission considers this concern to be unfounded.

(237) Second, the results of the market investigation confirmed that customers in the sector of substations have a large number of competing providers that can participate in tenders. The Commission notes that the competitors present at national level are also active at regional level. By way of illustration, for substations installation services at national level, Vinci as the largest competitor has a market share of approx. [10-20]%, followed by Fayat ([10-20]%) and Eiffage ([5-10]%). Other significant competitors include SPIE, the Firalp group and many others.[260] In the regional markets, Vinci is mostly the largest competitor, followed by Eiffage, Fayat and Spie. Spie is however the largest competitor in the Grand Est region.[261] Even in the region of Provence-Alpes-Côte d'Azur, where the Parties' combined share for installation services for substations exceeds 50%, the Parties will continue facing large competitors including Vinci ([10-20]%) and Eiffage ([10-20]%).[262] Furthermore, it is clear that there is competition in the market as there has been significant fluctuation in market shares over the last 3 years, since in 2019 and 2020 the Parties' shares were significantly lower ([20-30]% in 2020 and [20-30]% in 2019), with Vinci being the largest competitors during those years ([30-40]%) and Eiffage as the third player with a [10-20]% share in 2019 and 2020.

(238) Another customer submitted that the Transaction might lead to a decrease in the number of regular bidders for tenders regarding high-voltage power substations from 4 to 3 or less and, hence, have a negative impact of the Transaction with respect to prices and choice.[263] However, this respondent's feedback is not confirmed by the rest of the customers. On the contrary, the market investigation confirmed that a sufficient number of competitors are present in the market in all affected regions. In addition, for customers sourcing installation services for substations, the Parties are not amongst the most important suppliers.[264] Furthermore, the customer indicated that the limited number of bidders was not a general feature of the market, but characteristic only of his own tenders.[265] As mentioned above, large competitors such as Vinci, Eiffage and Spie are active across the different regions in France and could easily work in any region in France.

(239) Third, the results of the market investigation also confirmed that the Parties' main customers in the substations sector (throughout the different markets) are large nationwide single network operators such as RTE, Enedis and SNCF who exert bargaining power through competitive bidding processes in which price constitutes the main award criterion.[266]

(240) In view of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement with respect to the market for electrical engineering services in

260 Replies to eQ3 to customers of electrical engineering services, question 18.3.
261 Annex to response to RFI 11 relating to the Parties' market shares 2019-2021.
262 Response to question 4 of RFI 11.
263 Reply to eQ1 to customers of railway contact lines and catenary equipment, question D.1.
264 Replies to eQ3 to customers of electrical engineering services, questions 18.4, 20 and 20.1.
265 Minutes of a call with a customer, 17 June 2022.
266 Replies to eQ3 to customers of electrical engineering services, questions 21 and 22.

the substations sector in France, both at national and at regional level, and regardless of whether installation and maintenance services are considered together or separately.

5.3.1.4. Electrical engineering services in the public lighting sector

5.3.1.4.1. Market shares

(241) In electrical engineering services for customers in public lighting, the Transaction leads to affected markets at national level in France and in several regions, as shown in Table 10 below.

Table 10. Estimates of the Parties' market shares in engineering services in the public lighting sector (2019-2021)

Segment and geographic scope	2021			2020			2019		
	BYS	EQS	*comb*	BYS	EQS	*comb*	BYS	EQS	*comb*
Public lighting (installation and maintenance)									
Ile-de-France	[10-20]%	[5-10]%	*[20-30]%*	[20-30]%	[5-10]%	*[20-30]%*	[20-30]%	[5-10]%	*[30-40]%*
Public lighting (installation)									
France	[10-20]%	[10-20]%	*[20-30]%*	[10-20]%	[10-20]%	*[20-30]%*	[10-20]%	[10-20]%	*[20-30]%*
Centre-Val de Loire	[5-10]%	[30-40]%	*[30-40]%*	[5-10]%	[20-30]%	*[30-40]%*	[5-10]%	[20-30]%	*[30-40]%*
Hauts-de-France	[5-10]%	[10-20]%	*[20-30]%*	[10-20]%	[20-30]%	*[30-40]%*	[10-20]%	[10-20]%	*[30-40]%*
Ile-de-France	[20-30]%	[10-20]%	*[30-40]%*	[20-30]%	[10-20]%	*[30-40]%*	[20-30]%	[10-20]%	*[40-50]%*
Normandie	[20-30]%	[10-20]%	*[30-40]%*	[10-20]%	[10-20]%	*[20-30]%*	[10-20]%	[10-20]%	*[20-30]%*
Pays de la Loire	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[5-10]%	*[20-30]%*	[10-20]%	[5-10]%	*[20-30]%*
PACA	[0-5]%	[20-30]%	*[20-30]%*	[5-10]%	[20-30]%	*[30-40]%*	[10-20]%	[20-30]%	*[30-40]%*

Source: Annex to response to RFI 11 relating to the Parties' market shares 2019-2021.

5.3.1.4.2. Notifying Party's arguments

(242) The Notifying Party argues that the combined market share for the provision of electrical engineering services in the sector of public lighting would remain below 25% and the gap to the closest competitor (Vinci: [10-20]%) would remain limited ([5-10] percentage points). Furthermore, the Parties would keep facing other well-established competitors such as Eiffage, Citelum, Derichbourg, SPIE, and a large number of small and medium-sized providers.[267]

(243) In addition, the largest smart city project to date, which covers the city of Paris for a total amount of 704 million euros over a ten year period, has recently been awarded to a consortium between two of the Parties' main competitors (Eiffage and Citelum). This contract will replace the previous contract that will expire […]. Since the previous contract was concluded with a consortium between Bouygues, [Information regarding subcontractor], its expiry will further decrease the Parties' combined market share as of 2023.[268]

267 Form CO, paragraph 625.

268 Form CO, paragraph 627.

5.3.1.4.3. Commission's assessment

(244) The arguments in this Section apply to both installation and maintenance considered together, and installation services considered separately.

(245) First, as regards market shares, the Parties' combined share in any of the potential affected markets remains below 40%. The Commission notes that the competitors present at national level are also active at regional level. By way of illustration, at the national level, the Parties' combined share is only [20-30]% and a number of large competitors remain less than 10 percentage points behind: Vinci ([10-20]%), Citelum (EDF) ([10-20]%) and Eiffage ([10-20]%). Other significant competitors include Satelec (Fayat group), SPIE, Firalp group, Dérichbourg, Fauché, Snef, Lacis (NGE) and others.[269] These national shares are broadly representative of the picture at regional level.

(246) Second, the results of the market investigation confirmed that customers have a strong influence over their procurement negotiations through competitive bidding processes. The large majority of customers indicated that they would normally source electrical engineering services for public lighting through a tender procedure, often subject to public procurement rules.[270] For the majority of the respondents price is the most important contract award criterion, either alone or together with technical criteria.[271] None of the customers in the public lighting sector have indicated any concerns regarding the number of likely future bidders.[272]

(247) In view of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement with respect to the market for electrical engineering services in the sector for public lighting in France, both at national and at regional level, e and regardless of whether installation and maintenance services are considered together or separately. The results of the market investigation did not reveal any concerns with respect to these markets.

5.3.1.5. Electrical engineering services in the civil nuclear sector

5.3.1.5.1. Market shares

(248) For electrical engineering services in the civil nuclear industry, the Transaction would only give rise to an affected market as regards maintenance services at a regional level in France, in the regions of Auvergne-Rhône-Alpes and Occitanie, as shown in Table 11 below.

269 Form CO, Annex 6.2.1.3.3 and response to question 4 of RFI 11. See also Replies to eQ4 to competitors of electrical engineering services, question 19.5.

270 Replies to eQ3 to customers of electrical engineering services, question 21.

271 Replies to eQ3 to customers of electrical engineering services, question 22.1.

272 Replies to eQ3 to customers of electrical engineering services, question 25.

Table 11: Estimates of the Parties' market shares in electrical engineering services in the civil nuclear industry (2019-2021)

Segment and geographic scope	2021			2020			2019		
	BYS	EQS	*comb*	BYS	EQS	*comb*	BYS	EQS	*comb*
Electrical engineering services for civil nuclear sites (maintenance)									
Auvergne-Rhône-Alpes	[0-5]%	[20-30]%	*[20-30]%*	[0-5]%	[20-30]%	*[30-40]%*	[5-10]%	[20-30]%	*[20-30]%*
Occitanie	[10-20]%	[30-40]%	*[40-50]%*	[5-10]%	[20-30]%	*[30-40]%*	[10-20]%	[20-30]%	*[30-40]%*

Source: Annex to response to RFI 11 relating to the Parties' market shares 2019-2021.

5.3.1.5.2. Notifying Party's arguments

(249) The Notifying Party argues that the combined entity would continue facing competition from well-established competitors with market shares of up to 25%, including Vinci, SPIE, Snef, Eiffage, Gérard Perrier and Fayat. The gap to the closest competitor (Vinci) would remain minimal (approx. [0-5] percentage points at national level and less than 10 percentage points in the relevant regions). In addition, Equans' share can be attributed mainly to one major contract and therefore overstates its market position.[273]

5.3.1.5.3. Commission's assessment

(250) In Auvergne-Rhône-Alpes the Parties' combined market share remains below 30%, while the share increment is around [0-5]%. Eiffage Energy will likely remain the market leader in the region, with a market share of approximately [20-30]%, followed by Gérard Perrier ([20-30]%) and a lot of other competitors, who cumulatively account for [10-20]% of the market in the region. Even in the region of Occitanie, where the Parties' combined share reaches [40-50]%, the Parties will continue facing large competitors including SPIE ([10-20]%) and Vinci Energies ([10-20]%).[274]

(251) The Commission further notes that in 2021, Equans total turnover in the affected markets was EUR [Regional turnover] in Auvergne-Rhône-Alpes and EUR [Regional turnover] in Occitanie.[275] Out of these amounts, EUR [Regional turnover] in Auvergne-Rhône-Alpes and [Regional turnover] in Occitanie were generated by […].[276] This contract has been awarded to Equans by […].[277] It follows that, after completion of this contract, Equans' share in the two affected markets will decrease significantly.

(252) The results of the market investigation confirmed that the market for the provision of electrical engineering services in the civil nuclear industry is competitive, with many service providers active on the market, of which Bouygues is one of the smallest.[278] The clear majority of customers submitted that post-Transaction, they will continue to have sufficient alternative service providers for the electrical

273 Form CO, paragraphs 739, 744, and 746.
274 Response to question 4 of RFI 11.
275 Form CO, Annex 6.2.1.3.3.
276 Form CO, paragraph 747.
277 Form CO, paragraph 746.
278 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 31, and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 31.

engineering services that they request.[279] One of the main customers explains in this regard that *"[a]lthough (…) Ineo [i.e. Equans] is a medium player in electrical engineering, Bouygues is not strong in those markets. [This customer's] spending is twice bigger with Equans/Ineo than with Bouygues and in addition in electrical engineering market there are many players."*[280]

(253) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement, with respect to the market for electrical maintenance services in the civil nuclear industry at regional level in France, in Auvergne-Rhône-Alpes and Occitanie.

5.3.2. Vertically affected markets – Electrical engineering services in the telecommunication network sector (upstream) and deployment and operation of telecommunication networks (downstream)

(254) Bouygues, via its subsidiary Axione, is active on the market for the deployment and operation of optical fibre networks in low density public-initiative areas, which can be considered downstream from the provision of electrical engineering services for (fixed) telecommunication networks. Bouygues' share on that market would however remain below 20%.[281] Bouygues' share on a broader market for the deployment and operation of fixed telecommunication networks would be even lower.[282] Equans is not active in the deployment and operation of optical fibre networks in low density public-initiative areas.

(255) As shown in Table 7 above, the Parties' combined shares on the upstream market for the provision of electrical engineering services for telecommunication networks are above 30% in the regions of Nouvelle Aquitaine (for all telecommunication networks, installation of all telecommunication networks, fixed telecommunication networks, installation of fixed telecommunication networks, and maintenance of fixed telecommunication networks) and Pays de la Loire (installation of all telecommunication networks, fixed telecommunication networks, and installation of fixed telecommunication networks).

(256) The Transaction therefore gives rise to the vertically affected markets for (i) the provision of electrical engineering services for telecommunication networks (and potential narrower markets) in Nouvelle Aquitaine and Pays de la Loire upstream, and (ii) the deployment and operation of optical fibre networks in low density public-initiative areas in the same regions downstream.

5.3.2.1. Notifying Party's arguments

(257) The Notifying Party considers that in light of Bouygues' low share of demand for electrical engineering services in the downstream market for deployment and operation of telecommunication networks (less than [5-10]% nationally, less than [10-20]% in regions where the upstream share of supply exceeds 30%, and less

279 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 34.1.

280 Minutes of the call with a customer, 12.04.2022.

281 Form CO, paras. 458 and 467.

282 Form CO, paras. 458 and 467.

than [10-20]% in any region), the Transaction could not possibly give rise to customer foreclosure concerns for the provision of electrical engineering services in the fixed telecommunication networks sector.[283]

(258) The Notifying Party also contends that the proposed Transaction would not give rise to input foreclosure concerns.

(259) *First*, Bouygues' entities active on the downstream market are already vertically integrated and outsource only part of their installation and maintenance needs to third-party providers including [Information regarding subcontractor] (total outsourced amount per year, as of 2020: [Share of outsourcing]). The remainder is being performed by Axione "inhouse". In light of the limited external sourcing, the Parties would have no interest in restricting Ineo Infracom's activities for rival fixed telecommunication network operators given that the Parties would have limited ability to internalize Ineo Infracom's corresponding loss.[284]

(260) *Second*, the Parties would have no interest in engaging in an input foreclosure strategy to the detriment of rival telecommunication network operators, given that Bouygues Telecom subscribes to and depends on its competitors' offerings to get access to their networks for the provision of telecommunication services.[285]

(261) *Third*, given the significant number of available players on the market for the installation of fixed telecommunication networks, even if Bouygues Telecom and Axione were to engage in an input foreclosure strategy, such strategy would have no impact on competition given that their competitors would still have a large choice of suppliers that would be able to step in and perform installation works and maintenance services.[286]

(262) Finally, the Notifying Party considers that for the reasons above, the Transaction would have no impact on [Information about customer], Ineo Infracom's main customer, in particular.[287]

5.3.2.2. Commission's assessment

5.3.2.2.1. Customer foreclosure

(263) Bouygues' (*i.e.* Axione and Bouygues Telecom) share of demand for electrical engineering services in the downstream market for the deployment and operation of optical fibre networks in low density public-initiative areas is less than 10% nationwide in France. Bouygues' share of demand for the vertically affected markets at regional level is shown in Table 12 below.

283 Form CO, paragraphs 457 and 466.
284 Form CO, paragraph 467.
285 Form CO, paragraph 467.
286 Form CO, paragraph 467.
287 Form CO, paragraph 469.

Table 12: Estimates of Bouygues' (Bouygues Telecom and Axione) share of demand for electrical engineering services in the telecommunication networks sector (2019-2021)

Segment and geographic scope	2021			2020			2019		
	BYT	Axione	*comb*	BYT	Axione	*comb*	BYT	Axione	*comb*
Nouvelle Aquitaine									
All telecom networks	[5-10]%	[5-10]%	*[10-20]%*	[5-10]%	[5-10]%	*[10-20]%*	[5-10]%	[5-10]%	*[5-10]%*
All telecom networks (installation only)	[5-10]%	[5-10]%	*[10-20]%*	[5-10]%	[5-10]%	*[10-20]%*	[5-10]%	[5-10]%	*[10-20]%*
Fixed telecom networks	[0-5]%	[5-10]%	*[10-20]%*	[0-5]%	[5-10]%	*[10-20]%*	[0-5]%	[5-10]%	*[10-20]%*
Fixed telecom networks (installation only)	[0-5]%	[10-20]%	*[10-20]%*	[0-5]%	[5-10]%	*[5-10]%*	[5-10]%	[5-10]%	*[10-20]%*
Fixed telecom networks (maintenance only)	[0-5]%	[5-10]%	*[5-10]%*	[0-5]%	[5-10]%	*[10-20]%*	[0-5]%	[0-5]%	*[0-5]%*
Pays de la Loire									
All telecom networks (installation only)	[10-20]%	[5-10]%	*[10-20]%*	[10-20]%	[5-10]%	*[10-20]%*	[5-10]%	[5-10]%	*[10-20]%*
Fixed telecom networks	[5-10]%	[5-10]%	*[10-20]%*	[0-5]%	[5-10]%	*[5-10]%*	[5-10]%	[5-10]%	*[10-20]%*
Fixed telecom networks (installation only)	[5-10]%	[10-20]%	*[10-20]%*	[0-5]%	[5-10]%	*[5-10]%*	[5-10]%	[5-10]%	*[10-20]%*

Source: Form CO, Table 31.

(264) The Commission notes that in light of Bouygues' low share of demand for electrical engineering services in the downstream market for deployment and operation of telecommunication networks, customer foreclosure concerns are unlikely. The Parties' share of demand remains below 20% in any plausible segment. The Parties therefore do not constitute a "significant" customer base, nor an important customer the restriction of access to which could impact upstream rivals' market access as there remain sufficient alternatives in the downstream market.

5.3.2.2.2. Input foreclosure

(265) First, the Commission considers that the Parties will not have the ability to foreclose competitors in the downstream market from access to electrical engineering services upstream. As shown in Table 7 above, the Parties' combined shares on the upstream market for the provision of electrical engineering services for telecommunication networks remains moderate. Even in Nouvelle Aquitaine, the only region where the combined share exceeds 40%, this share is not indicative of market power that would allow the Parties to foreclose downstream rivals. Indeed, the market for electrical engineering services for customers in the telecommunications sector is primarily a bidding market, in which market shares fluctuate over the years as a result of projects being won or terminated.

(266) Furthermore, even if the Parties were able to internalize the capacity that frees up at the end of each project, there would remain a sufficient number of capable competitors as discussed at paragraph (217) above able to compensate for the lost volumes and to supply the Parties' downstream competitors.[288]

[288] See paragraph (216) above and replies to eQ3 to customers of electrical engineering services, question 18.2.

(267) Second, the Commission considers that the merged entity will not have the incentive to foreclose downstream rivals from fixed telecommunication network installation and maintenance services. The merged entity's upstream loss from not providing installation and maintenance services will not necessarily be recovered in the downstream market, as the deployment and operation of FttH networks is being sourced through tenders.[289] Indeed, the provision or not of the engineering services upstream has no impact on downstream rivals' ability to effectively compete in such tenders, as the outsourcing of the engineering part usually takes place separately and independently of the tender for network deployment and operation. On the contrary, providing their services also to downstream competitors would allow the merged entity to benefit even from a rival's win of a downstream contract.

(268) In addition, the […] most important customer of Equans' (Ineo Infracom) installation and maintenance services for fixed telecommunication network operators is […], which accounts for […]% of the total contract value of Equans' ongoing contracts as of 2021.[290] Losses incurred from no longer supplying Orange would be unlikely to be recouped, as the discontinuation of business with Orange, a major national and international telecom service provider, would very likely not lead to an accrual of downstream business for Bouygues. Indeed, Orange responded during the market investigation that it would be able to easily replace Ineo Infracom by alternative service providers.[291] Moreover, Bouygues Telecom and Orange have concluded a partnership agreement regarding the deployment of FttH networks in France, whereby Orange shares access to its FttH network in densely populated areas of France with Bouygues Telecom for the network segment leading to the foot of the buildings.[292] Any foreclosure of Orange from the Parties' installation and maintenance services would therefore risk to jeopardize Bouygues Telecom's commercial relationship with Orange and, ultimately, its FttH network access in densely populated areas.

(269) Third, the Commission considers that even if the merged entity were to engage in an input foreclosure strategy, such strategy would have no impact on competition on the downstream market. The market investigation has shown that a large number of alternative service providers exist in every region of France, including in the affected regions, who would be able to supply the services currently provided by Equans.[293]

5.3.2.3. Conclusion on vertical effects

(270) In view of the foregoing, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement with respect to the vertically affected markets

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289 Replies to eQ3 to customers of electrical engineering services, questions 21 and 21.1, in response to which all of Bouygues' FttH installation and maintenance customers of the Nouvelle Aquitaine region who responded to the questionnaire confirmed to "*always use public contract award procedures*" given that as public authorities, they are subject to public procurement obligations.

290 Form CO, paragraph 575.

291 Form CO, paragraph 467, and replies to eQ3 to customers of electrical engineering services, questions 20 and 24.1.

292 See press release by Orange of 17 January 2012, "France Telecom-Orange enters into partnership with Bouygues Telecom concerning the deployment of its optical fiber networks".

293 Replies to eQ3 to customers of electrical engineering services, question 18.2.

for the provision of electrical engineering services in the telecommunication network sector upstream, on the one hand, and for the deployment and operation of (fixed) telecommunication networks downstream, on the other hand.

5.4. HVAC engineering services in the civil nuclear industry

5.4.1. Market shares

(271) For HVAC engineering services in the civil nuclear industry, the Transaction would only give rise to an affected market for installation services at national level in France, as shown in Table 13 below. The Parties do not overlap in the provision of maintenance services.

Table 13: Estimates of the Parties' market shares in HVAC engineering services in the civil nuclear industry (2019-2021)

Segment and geographic scope	2021			2020			2019		
	BYS	EQS	*comb*	BYS	EQS	*comb*	BYS	EQS	*comb*
HVAC installation services in the civil nuclear industry									
France (national)	[0-5]%	[30-40]%	*[30-40]%*	[0-5]%	[20-30]%	*[30-40]%*	[5-10]%	[20-30]%	*[30-40]%*

Source: Answer to question 15, RFI 2; Annex to response to RFI 11 relating to the Parties' market shares 2019-2021.

5.4.2. Notifying Party's arguments

(272) The Notifying Party submits that on the market for HVAC installation services in the civil nuclear industry, the market share increment is negligible (less than 5%) and the Parties will keep facing strong competition from long-established players such as Dalkia, Spie Nucléaire, Vinci Energies, Cofely and Eiffage Energies, and several other players like CAP2I, Bobion et Joanin, Nordon, Monteiro and CMFT Industrie.[294]

(273) Furthermore, the Notifying Party argues that, contrary to Equans, Bouygues is not a specialized player of HVAC engineering services. Through its subsidiary BCSN,[295] Bouygues provides, amongst other activities, civil works, various maintenance services, robotics, decommissioning and waste management services. Ventilation activities represented approx. […] of BCSN's turnover in 2020 and […] of its turnover in 2021.[296]

5.4.3. Commission's assessment

(274) The Parties' combined market share in the market for HVAC installation services in the civil nuclear industry in France is [30-40]%, while the share increment remains around 2%. The combined entity will continue facing well established competitors, including SPIE Nucléaire ([10-20]%), Vinci Energies ([10-20]%), and Dalkia ([5-10]%).[297]

(275) The results of the market investigation indicated that Equans, through its subsidiary Axima, is the leader in the market for the provision of HVAC engineering services

294 Form CO, para. 725.
295 *Bouygues Construction Services Nucléaires.*
296 Form CO, para. 731.
297 Response to question 4 of RFI 11.

in France.[298] However, the market investigation also confirmed that Bouygues is perceived by a significant majority of respondents as a much smaller player, compared to the other competitors active on that market.[299] One of the main customers noted that *"Bouygues and Equans are not close competitors in France for nuclear HVAC services. Axima's market share for [this customer] (…) is much higher than Bouygues' (…)."*[300]

(276) The market investigation further confirmed that HVAC installation services are sourced by customers in the civil nuclear industry through tenders.[301] A significant majority of all respondents does not expect any significant impact of the Transaction on the market for the provision of HVAC engineering services for the civil nuclear industry.[302] In particular, the majority of customers responded to the market investigation that they will have enough participation in their tenders post-Transaction.[303] As one customer notes, "*[t]here are enough competitors to not be impacted*."[304] EDF, the Parties' main customer similarly noted in this respect *"[w]ith a panel of 5 companies, we generally have no problem*."[305] Since EDF tenders the largest projects for HVAC installation services compared to the other customers in France,[306] it follows that, if the remaining competitors are capable of carrying out such larger projects, they will also be capable of carrying out smaller projects for other customers.

(277) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA agreement, with respect to the market for HVAC installation services in the civil nuclear industry in France.

6. PROPOSED REMEDIES

(278) The Commission considers that in the overall market for the installation and maintenance of catenaries and overhead contact lines in Belgium, as well as in both the potential narrower markets in Belgium for long-distance and metropolitan rail, the Transaction raises serious doubts as to its compatibility with the internal market

298 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 19, and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 20.

299 *Ibid.*

300 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 21.

301 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 24, and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 28.

302 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 43, 43.1, and replies to eQ6 to competitors in electrical and HVAC engineering services in the civil nuclear sector, question 41.

303 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 28.

304 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 43.1.

305 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question 28.

306 Replies to eQ5 to customers of electrical and HVAC engineering services in the civil nuclear sector, question B.27.

and the functioning of the EEA agreement due to horizontal non-coordinated effects.

6.1. Framework for the assessment of the commitments

(279) 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.

(280) As set out in the Commission Notice on Remedies,[307] 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.

(281) In assessing whether or not the commitments proposed by the parties would restore 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.[308]

(282) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. 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.

(283) 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. The intended effects of a divestiture will only be achieved if and once the business to divest is transferred to a suitable purchaser.

(284) 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. 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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307 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.

308 Commission Notice on Remedies, paragraph 12.

6.2. Commitments submitted by the Parties

6.2.1. Initial Commitments

(285) In order to render the concentration compatible with the internal market and the functioning of the EEA agreement, the Notifying Party offered to modify the Transaction by entering into commitments. On 28 June 2022, the Notifying Party submitted a first set of remedies ("Initial Commitments").

(286) As per the Initial Commitments,[309] the Notifying Party proposed to divest Colas Rail Belgium, a standalone business and separate legal entity, which is a subsidiary of Bouygues, providing catenary and overhead contact line installation and maintenance services as well as track works to rail customers in Belgium, excluding any liability connected with the Liège tramway project (the "Liège Tramway Project").

(287) Specifically, the Notifying Party committed to divest Colas Rail Belgium as a going concern, including:

(a) All tangible and intangible assets necessary to provide catenary and overhead contact line installation and maintenance services as well as track installation and maintenance services, including a real estate site, machinery, and software programmes.

(b) Licenses, permits and authorisations necessary for the tendering for and execution of catenary and overhead contact line engineering and rail works projects, as well as quality and security certifications.

(c) Customer contracts for any ongoing and future catenary and overhead contact line installation and maintenance as well as track works projects.

(d) Customer accounts, credit and other records held by Colas Rail Belgium.

(e) The personnel included in Table 2 of Schedule 1 to the Commitments.

(f) Key personnel, notably Colas Rail Belgium's CEO, CFO, and COO.

(g) Transitional arrangements for a number of products and services.

(288) In addition, the Notifying Party committed to indemnify the Purchaser against any actual loss borne by Colas Rail Belgium in connection with the construction of the Liège tramway as (i) shareholder of […] or (ii) member of […], two contracting entities for the Liège tramway construction (the "Hold-Harmless Mechanism" or "HHM"). The Hold-Harmless Mechanism foresees a contractual warranty to indemnify the purchaser without limitation and to discharge Colas Rail Belgium of any obligation to deploy personnel and/or equipment to the construction of the Liège tramway except for […] employees and […] machines (that are already employed/acquired for this purpose). At the option of the purchaser, the Notifying Party commits to cover any costs in relation to the deployment of these employees and machines. At the further option of the purchaser, the HHM is extendable to any

[309] 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.

actual loss borne by Colas Rail Belgium in connection with maintenance in relation to the Liège Tramway Project as shareholder of […].[310]

(289) The Notifying Party has 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.

6.2.2. Results of the market test of the Initial Commitments

(290) The Commission market tested the Initial Commitments as of 29 June 2022. On 8 July 2022, the Commission communicated to the Notifying Party the feedback received by market test respondents.

(291) The results of the market test indicated that overall, the sale of Colas Rail 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 Commitments would remove the competition concerns in respect of the Belgian market for catenaries and overhead contact lines installation and maintenance.[311]

(292) With regard, in particular, to the Hold-Harmless Mechanism, respondents noted that the option for the purchaser to extend the HHM to cover any actual loss borne by Colas Rail Belgium in connection with the maintenance part of the project was an important aspect of the mechanism.[312]

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

(294) *First*, the key personnel should include also personnel involved in project execution and the preparation of tender bids.[313]

(295) *Second*, respondents to the market test indicated that to ensure the viability of Colas Rail Belgium, it would be necessary to improve the HHM that the Notifying Party proposed in the Initial Commitments. A majority of respondents considered that it would be beneficial to have additional safeguards built into this mechanism, for example, guarantees like a first demand bank guarantee.[314] These had already been contemplated by the Notifying Party, but had not been offered as part of the Initial Commitments.

(296) *Third*, some respondents voiced concerns with regard to the Liège Tramway Project and indicated that the purchaser might find it preferable to exit the project altogether at the earliest date possible.[315]

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310 Initial Commitments, Schedule, paragraph 3.
311 Replies to Questionnaire on commitments offered by Bouygues, question 3.
312 Replies to Questionnaire on commitments offered by Bouygues, question 11.2.
313 Replies to Questionnaire on commitments offered by Bouygues, question 7.
314 Replies to Questionnaire on commitments offered by Bouygues, question 12.
315 Replies to Questionnaire on commitments offered by Bouygues, question 11.1.

(297) The Commission's market test also probed whether the purchaser criteria of the Initial Commitments were sufficient (stipulating that the purchaser shall have "*proven expertise in the field*") or further purchaser criteria should be included. The majority of respondents indicated that the purchaser should be an industrial player, i.e. either active in the installation and maintenance of catenaries or, at the very least, already active in the railway business.[316]

6.2.3. Final Commitments

(298) In view of the results of the market test and following the feedback provided by the Commission, the Notifying Party submitted revised commitments and a revised Form RM, on 13 July 2022 (the "Final Commitments").

(299) In order to address the issues raised during the market test, the Notifying Party amended the Initial Commitments to:

(a) increase key personnel from […] to […] employees, including additional personnel in charge of tender submissions and the technical project coordination and execution, including the director of the catenary branch, the technical director of special track projects, and an assistant manager and project and site leaders, listed in paragraph 2(g) of Schedule 1 to the Final Commitments;

(b) improve the HHM described at paragraph (288) above by offering:

i. two first demand bank guarantees for the entire duration of the HHM, one guarantee covering all financial claims for which Colas Rail Belgium would be liable in connection with the construction part of the Liège Tramway Project and the other guarantee covering all financial claims for which Colas Rail Belgium would be liable in connection with the maintenance part of the project;

ii. an option for the purchaser to trigger the obligation of the Notifying Party to buy back Colas Rail Belgium's involvement in the abovementioned project at the earliest date possible[317]; and

(c) specify that the purchaser shall have "*proven expertise in railway infrastructure".*

(300) The Notifying Party considers 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 Notifying Party is 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.

316 Replies to Questionnaire on commitments offered by Bouygues, question 17.

317 Subject to the relevant prior third-party approvals required under the Tram de Liège project documentation, the purchaser will have the right to cause the Notifying Party to buy from Colas Rail Belgium the stake held by Colas Rail Belgium in Tram de Liège project through a put option. As a result, Colas Rail Belgium will completely exit the Tram de Liège project.

7. ASSESSMENT OF THE PROPOSED REMEDIES

7.1. Suitability of the Final Commitments to remove serious doubts

(301) Colas Rail Belgium is a subsidiary of Colas Rail SASU ("Colas Rail"), a subsidiary of Colas, active in catenaries and overhead contact lines as well as track installation and maintenance, which carries out about […]% of its activities in catenaries and overhead contact lines projects and […]% in track projects. Colas Rail Belgium is an independent legal entity which 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.

(302) 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 catenaries and overhead contact lines installation and maintenance market (and the plausible narrower segments concerning long-distance and metropolitan rail) in Belgium.

(303) The Commission considers that following the amendments the Commitments address the concerns raised during the market test and that as such, the Final Commitments of 13 July 2022 are suitable to entirely remove the competition concerns raised by the Transaction.

7.2. Viability and attractiveness of the Divestment Business

(304) The Divestment Business is profitable, with a turnover of EUR […] (catenaries) and EUR […] (tracks), and an EBITDA of EUR […] in 2021.[318]

(305) The market test has confirmed the viability and attractiveness of Colas Rail Belgium. Concretely, the vast majority of the market test respondents that replied in this regard confirmed that Colas Rail Belgium would be viable, and 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.[319]

(306) In particular, the additional Key Personnel added in the Final Commitments will ensure that the Divestment Business will remain able to independently participate in upcoming tender procedures and bid for future projects.

(307) In addition, the improved Hold-Harmless Mechanism increases the attractiveness of the Divestment Business for the potential purchaser and will help to ensure the viability of Colas Rail Belgium in the event it would face potential liability claims that could ensue from the ongoing catenaries installation and maintenance parts of the Liège Tramway project.

(308) Based on the results of the market test, and following the Notifying Party's amendments in the Final Commitments, the Commission considers that Colas Rail Belgium is a viable and attractive business. This is further confirmed by the fact

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318 Form RM, Tables 11 and 12. This does not reflect the losses incurred by the Liège Tramway Project, […], as the purchaser would be held harmless against any further losses under the HHM.

319 Replies to Questionnaire on commitments offered by Bouygues, questions 4 and 5.

that at least 7 companies active in railway infrastructure have expressed a preliminary interest in acquiring Colas Rail Belgium.[320]

7.3. Purchaser criteria and buyers

(309) The Initial Commitments contain the standard requirements that the purchaser (i) be independent from the Notifying Party, (ii) has the financial resources, proven expertise (qualified as "*proven expertise in the field*") and incentive to maintain and develop the divestment business as a viable and active competitive force, and (iii) be unlikely to create competition concerns.[321] As described at paragraph (297) above, the Commission's market test indicated that criterion (ii) was insufficient.

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

(311) 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 Colas Rail Belgium as a viable and active competitive force in competition with the Parties and other competitors.

7.4. Conclusion

(312) For the reasons outlined above, the Final Commitments entered into by the Notifying Party 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 installation and maintenance of catenaries and overhead contact lines in Belgium. The Commission, therefore, concludes that, subject to full compliance with the Final Commitments given by the Notifying Party, 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

(313) The commitments in Section B (and the respective Schedules) of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market and the functioning of the EEA agreement.

9. CONCLUSION

(314) For the reasons set out in this decision, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions set out in Section B (and the respective Schedules) of the commitments

320 Replies to Questionnaire on commitments offered by Bouygues, question 17.

321 Commitments, paragraph 16.

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 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. 10575 – Bouygues S.A. and Equans S.A.S

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), Bouygues S.A. (the "***Notifying Party"*** or "***Bouygues***") hereby enters into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition of Equans S.A.S. ("***Equans***") (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***").

Section A.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 Section B, 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 which the Notifying Party commit to divest as defined in Section B and in the Schedule.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Bouygues and who has/have received from Bouygues 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.

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

Hold Separate Manager: the person appointed by Bouygues 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.

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

Parties: the Notifying Party and the undertaking that is the target of the concentration ("**Bouygues**" and "**Equans**").

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 Section D.

Purchaser Criteria: the criteria laid down in paragraph 16 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.

Bouygues: Bouygues S.A. incorporated under the laws of France, with its registered office at 32 Avenue Hoche 75008 Paris and registered with the Commercial/Company Register in Paris under number 572 015 246.

Colas Rail: Colas Rail SASU incorporated under the laws of France, with its registered office at 2 Place des Vosges, 92400, Courbevoie and registered with the Commercial/Company Register in Nanterre under number 632 049 128.

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

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, Bouygues commits 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 17 of these Commitments. To carry out the divestiture, Bouygues commits 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 Bouygues has not entered into such an agreement at the end of the First Divestiture Period, Bouygues shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period.

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

   (a) by the end of the Trustee Divestiture Period, Bouygues or the Divestiture Trustee 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 17; 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 Notifying Party 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 Notifying Party showing good cause and accompanied by a report from the

Monitoring Trustee (as provided in paragraph 44 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 Colas Rail Belgium which carries out about […]% of its activity in catenaries and overhead contact lines ("OCL") contracts and […]% in tracks contracts, excluding any liability for the Liège Tramway Project under the terms described in the Schedule. 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 Bouygues 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, OLC and tracks operations.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

7. From the Effective Date until Closing, the Notifying Party 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 Bouygues undertakes:

(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;

(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 to remain with the Divestment Business, and not to solicit or move any Personnel to Bouygues's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Bouygues shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Bouygues must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

8. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Business separate from the business(es) it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) retained by Bouygues have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by Bouygues and do not report to any individual outside the Divestment Business.

9. Until Closing, Bouygues shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which Bouygues is retaining. Immediately after the adoption of the Decision, Bouygues 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 Bouygues 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(c) of these Commitments. The Commission may, after having heard Bouygues, require Bouygues to replace the Hold Separate Manager.

10. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise Bouygues's rights as shareholder in the legal entity or

entities that constitute the Divestment Business (except for its 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 Bouygues's 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 Bouygues. Upon request of the Monitoring Trustee, Bouygues shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

11. Bouygues shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by Bouygues before the Effective Date will be eliminated and not be used by Bouygues This includes measures vis-à-vis Bouygues 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. Bouygues 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 Bouygues is required by law.

Non-solicitation clause

12. 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

13. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Bouygues 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

14. Bouygues 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). Bouygues 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.

15. Bouygues 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.

Section D. The Purchaser

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

    1. The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
    2. The Purchaser shall have the financial resources, proven expertise in railway infrastructure and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
    3. 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.

17. 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 Bouygues has reached an agreement with a purchaser, it 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. Bouygues 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.

Section E. Trustee

I. Appointment procedure

18. Bouygues shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

19. If Bouygues has 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 Bouygues at that time or thereafter, Bouygues shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

20. The Trustee shall:

(i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
(iii) neither have nor become exposed to a Conflict of Interest.

21. The Trustee shall be remunerated by the Notifying Party 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 Bouygues

22. No later than two weeks after the Effective Date, Bouygues shall submit the name or names of one or more natural or legal persons whom Bouygues 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, Bouygues shall submit a list of one or more persons whom Bouygues 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 fulfil the requirements set out in paragraph 21 and shall include:

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

(b) the outline of a work plan which describes how the Trustee intends to carry out its

assigned tasks;

(c) an indication whether the proposed Trustee 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

23. 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 Trustee to fulfil its obligations. If only one name is approved, Bouygues 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, Bouygues; shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Bouygues

24. If all the proposed Trustees are rejected, Bouygues shall submit the names of at least two more legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

Trustee nominated by the Commission

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

II. <u>Functions of the Trustee</u>

26. 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 Bouygues, 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

27. The Monitoring Trustee shall:

(i) 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,

(ii) 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 Bouygues with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 8 and 9 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that Bouygues 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 Bouygues before the Effective Date is eliminated and will not be used by Bouygues and

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

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

(iii) propose to Bouygues such measures as the Monitoring Trustee considers necessary to ensure Bouygues's 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;

(iv) 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:

(a) 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

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

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

(vi) provide to the Commission, sending Bouygues 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;

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

(viii) within one week after receipt of the documented proposal referred to in paragraph 17 of these Commitments, submit to the Commission, sending Bouygues 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;

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

28. 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

29. 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 16 and 17 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 Bouygues, subject to the Notifying Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

30. 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 Notifying Party.

III. Duties and obligations of the Parties

31. Bouygues shall provide and shall cause its 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 Bouygues 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 Bouygues and the Divestment Business shall provide the Trustee upon request with copies of any document. Bouygues 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.

32. Bouygues 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. Bouygues shall provide and shall cause its 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. Bouygues 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.

33. Bouygues 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, Bouygues shall cause the documents required for effecting the sale and the Closing to be duly executed.

34. Bouygues 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 Bouygues 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.

35. At the expense of Bouygues, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Bouygues's 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 Bouygues refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Bouygues. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 34 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Bouygues during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

36. Bouygues agrees that the Commission may share Confidential Information proprietary to Bouygues 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*.

37. The Notifying Party agrees 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.

38. 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.

IV. Replacement, discharge and reappointment of the Trustee

39. 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 Bouygues, require Bouygues to

replace the Trustee; or

(b) Bouygues may, with the prior approval of the Commission, replace the Trustee.

40. If the Trustee is removed according to paragraph 39 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 18-25 of these Commitments.

41. Unless removed according to paragraph 39 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.

Section F. The review clause

42. The Commission may extend the time periods foreseen in the Commitments in response to a request from Bouygues or, in appropriate cases, on its own initiative. Where Bouygues requests an extension of a time period, it 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 Notifying Party. Only in exceptional circumstances shall Bouygues be entitled to request an extension within the last month of any period.

43. The Commission may further, in response to a reasoned request from the Notifying 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 Notifying Party. 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.

Section G. Entry into force

44. The Commitments shall take effect upon the date of the adoption of the decision.

(Signed)

Duly authorised for and on behalf of
Bouygues S.A.

Schedule 1
Colas Rail Belgium

1. The Divestment Business as operated to date has the following legal and functional structure: Colas Rail Belgium is a legal subsidiary of Colas Rail (controlled at […]%). An organisational chart can be found below. The Divestment Business consists of Colas Rail Belgium which carries out about […]% of its activity in catenaries and OCL contracts and […]% in tracks contracts, excluding any liability for the Liège Tramway Project contract under the terms described in the Schedule.

[…]

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 Colas Rail Belgium. The site includes, a warehouse, a storage space, IT installations and office space available for all of Colas Rail Belgium, for both the catenary and overhead contact lines and the track activities (a total of […] sq.m.). Colas Rail 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 HI distribution and HI 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);
- H1, class 6 qualification (welding rails);
- H2, class 8 qualification (catenary works);
- ISO 9001:2015 certifcation (quality standard); and
- VCA** certification (security standard).

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

Table 1. Colas Rail Belgium's on-going contracts and future revenues

Type of contract	Number	Total contract value (euros)	Future revenues (euros)[2]
All on-going catenary contracts	[…]	[…]	[…][3]
All on-going tracks contracts	[…]	[…]	[…][4]
Signed contracts	[…][5]	[…]	[…][6]
On-going application process	[…]	[…]	[…]

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

- […]
- […]
- […]

1 HI Account is used for Colas Rail Belgium's accounting needs. HI Distribution is used for stock management and is linked to Auto Rail (the catenary design software based on Autocad) enabling it to deal with equipment orders and stock.
2 As of January 2022.
3 […].
4 […].
5 […].
6 […].

(f) the following Personnel:

Table 2. Function and number of employees in Colas Rail Belgium (End of March 2022)

	Function	Department	Number
Operational	General manager	Catenary/Track	[…]
	QSE manager[7]	Catenary/Track	[…]
	QSE Assistant	Catenary/Track	[…]
	Operations manager	Catenary	[…]
		Track	[…]
	Linesmen	Catenary	[…]
		Track	[…]
Support functions	IT manager[8]	Catenary/Track	[…]
	Financial department – CFO	Catenary/Track	[…]
	Finance employees	Catenary/Track	[…]
	Human resources manager	Catenary/Track	[…]
	Human resources employees	Catenary/Track	[…]
	Material manager[9]	Catenary/Track	[…]
	Material employee[10]	Catenary/Track	[…]
TOTAL			**150**

(g) the following Key Personnel:

7 In charge of implementing and doing the follow-up of all Quality Safety and Environmental policies.
8 In charge of managing hardware and software, as well as relationship with headquarters' IT Team.
9 In charge of following up proper management of plant and equipment (dispatching, usage and maintenance).
10 In charge of the maintenance.

[…]

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

- extension of the following existing insurance policies (i.e. (i) third party liability, (ii) damage to properties and (iii) machinery breakdown.);
- provision of financing facilities and cash pooling (excluding any bonding facilities);
- upkeeping of the United Platform[11] (including (i) network, (ii) servers, (iii) security, (iv) mailboxes, (v) access to Internet and (vi) software licenses); and
- payroll administration.

3. The Divestment Business includes the participation of Colas Rail Belgium in […], […] and […]:

(a) The Notifying Party commits to indemnify the Purchaser against any actual loss borne by the Divestment Business in connection with the construction of the Liège Tramway Project as (i) shareholder of […] or (ii) member of […]. The Notifying Party's commitment to indemnify the Purchaser will neither be limited by any cap, de minimis or deductible/threshold nor by any element disclosed to the Purchaser in the data room. The amount of losses to be indemnified by the Notifying Party shall be computed under customary standards, taking into account any cash net profit benefiting the Divestment Business in connection with the installation of catenaries and/or tracks for the Liège Tramway Project.

[11] United Platform is the unified and standard framework of the Colas information system. It consists in particular of (i) equipment (laptops, switches, etc.) and (ii) identities of the Colas personnel belonging to a specific directory (with rights / authorisations in the various territories and tools).

Except if the Purchaser elects for an extension of the "hold harmless"[12] mechanism to the maintenance part of the Liège Tramway Project (as described in paragraph (b) below), this computation of losses shall not take into account any cash net profit benefiting the Divestment Business in connection with the maintenance in the Liège Tramway Project. The Notifying Party also commits to discharge the Divestment Business of any obligation to deploy personnel and/or equipment to the construction of the Liège Tramway Project except as regards the deployment of […] employees ([description of employees]) and […] machines which were acquired by Colas Rail Belgium for the purpose of the Liège Tramway Project. (the "**Dedicated Assets**"). At the option of the Purchaser, the Notifying Party shall cover any costs in relation to the deployment of the Dedicated Assets.

(b) At the option of the Purchaser, this "hold harmless" commitment shall be extended to any actual loss borne by the Divestment Business in connection with maintenance in the Liège Tramway Project as shareholder of […]. For the avoidance of doubt, the Divestment Business has no obligation to deploy any own personnel and/or equipment to the maintenance of the Liege Tramway, in case of the application of the "hold harmless" mechanism to the maintenance part of the Tram de Liege Project.

4. 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.

[12] The hold-harmless mechanism is attached as **Schedule 2**..

SCHEDULE 2

TERM SHEET – HOLD-HARMLESS MECHANISM

(Indemnity Warranty)

Tram de Liège project – Summary wording on the hold harmless mechanism

(Indemnity Warranty)

This memo aims at explaining the main terms of the hold harmless mechanism (the "**Mechanism**") that will be included in the share purchase agreement to be entered into in the context of the proposed divestment by Colas Rail SAS ("**Colas Rail**", or "**Seller**") of 100% of the shares of its Belgian subsidiary Colas Rail Belgium SA ("**Target**") (the "**Transaction**").

The objective of the Mechanism is to put the purchaser (the "**Purchaser**") in the same situation as if the Liège Tramway Project were excluded from the transaction perimeter (other than as service provider).

[…]