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Case No COMP/M.6623 - VINCI/ EVT BUSINESS

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 31/08/2012

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

**Subject: Case No COMP/M.6623 - VINCI/ EVT BUSINESS
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 26 July 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation² by which VINCI Energies, belonging to the group VINCI SA ("VINCI", France) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole EVT (Energieversorgungstechnik or energy supply technology) business ('EVT Business'), consisting of a number of undertakings currently controlled by Alpiq Anlagentechnik GmbH ("AAT", Germany), by way of purchase of shares. VINCI Energies is hereinafter referred to as the "Notifying Party" and together with EVT Business as "the Parties".

(1) THE PARTIES AND THE OPERATION

2. VINCI Energies is active in electrical engineering (electrical and telecommunication networks, power supply and others), climatic engineering (heating, cooling, air treatment and others), and mechanical engineering (automation, instrumentation and control systems

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 Publication in the Official Journal of the European Union No C232, 3.8.2012, p. 10.

and others) for various sectors. VINCI's further activities include public concessions, building and infrastructure services.

3. The EVT Business constitutes Alpiq's activities in engineering and installation services for energy transmission and distribution networks as well as for telecommunications infrastructure, mainly for industrial applications and utilities providers. The undertakings forming the EVT Business are active in Germany (where EVT business generates more than 85% of its turnover), Austria, Hungary, Italy, the Czech Republic and Slovakia.
4. Pursuant to the Sale and Purchase Agreement agreed by VINCI Energies and AAT, VINCI Energies will acquire sole control over the companies and certain related assets and contracts constituting the EVT Business. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(2) EU DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (EUR 36 959 million for Vinci and EUR 512 million for EVT Business). Each of them has an EU-wide turnover in excess of EUR 250 (EUR 32 878 million for Vinci and EUR 512 million for EVT Business), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

(3) COMPETITIVE ASSESSMENT

6. The Parties' activities overlap in the area of electrical engineering in Austria, the Czech Republic, Germany, Hungary, the Netherlands and Slovakia.⁴ The only affected market, however, arises with respect to a horizontal overlap between the Parties' activities in the power lines potential sub-segment of electrical engineering services in the Czech Republic.

MARKET DEFINITION

Relevant product market

7. In line with Commission's previous practice, where a distinction has been made between electrical, mechanical and air-conditioning services,⁵ the Notifying Party submits that a broad distinction is to be made between electrical and mechanical engineering (the two out of the three sectors where the Parties are both active). In a similar vein, it further considers that within the electrical engineering market several subsegments can be distinguished, depending on (i) the type of business (residential and non-residential buildings), (ii) the type of work (installation / maintenance), and (iii) the nature of the service (infrastructures, industry and tertiary sector). Any other or further segmentation is rejected by the Notifying

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

4 Technically, there are also overlaps in Belgium, Italy and Spain. However, in all these Member States, the EVT Business's increment is negligible (EUR 0.1 million in Belgium and Spain; EUR 0.3 million in Italy) and the transaction does not lead to any affected markets.

5 Case M.5701 – VINCI /Cegelec.

Party. The relevant markets are consequently on this basis the non-residential⁶ markets for (i) installation and (ii) maintenance in (a) infrastructure, (b) industry and (c) the tertiary sector respectively.

8. The Commission previously distinguished between engineering for electrical, water and ventilation installations.⁷ Within electrical installations it further differentiated according to the type of installation between electromechanical systems,⁸ which are integrated systems satisfying a certain consumer demand,⁹ electrical installation, which is the installation of equipment chosen by the customer under his instruction, and maintenance and management of electromechanical systems and electrical installations.¹⁰ The Commission also differentiated according to customer groups between markets for residential and non-residential engineering,¹¹ with the latter sub-divided into infrastructures,¹² industry¹³ and the tertiary sector.¹⁴
9. In so far, the Notifying Party's proposal for the definition of the relevant markets is, thus, in line with previous Commission practice.
10. However, the Commission also previously considered high- and medium-voltage electricity networks as a possible, separate segment within the overall electrical installation segment due to its specialist requirements.¹⁵ In line with this, the Commission stated in its most recent decision, in the case *VINCI / Cegelec*, that it could be appropriate to identify telecommunication networks, substations and power lines (electricity lines with a current of more than 50 000 volts) as separate sub-segments within electrical installations, given the differing scope and complexity of these projects.¹⁶
11. The market investigation in the Czech Republic (the only Member State where the proposed transaction gives rise to an affected market) confirms the previous findings.

6 According to the Notifying Party neither of the Parties is active in residential engineering.

7 Case COMP/M.3004 - BRAVIDA / SEMCO / PRENAD / TOTALINSTALLATÖREN / BACKLUNDS, paras. 8-18.

8 Including as sub-segments: building systems (security systems and management systems such as heat-ventilation-air conditioning systems), cooling systems and automation systems (baggage handling, cargo handling, parcel mechanization and automated warehousing).

9 According to the Notifying Party, this segment bears no relevance for the present case because the EVT Business is virtually not active in this segment and where it is, there are no geographic overlaps with VINCI.

10 Meaning monitoring services and periodical control visits on the basis of term-contracts.

11 Case COMP/M.2447 – Fabricom/GTI, para. 10.

12 This includes installations for roads, railways, waterways, airport and telecommunication as well as electrical installations for the transport and distribution of electricity.

13 This includes power, lighting and instrumentation including the related process control, which are supplied and installed in chemical companies, food factories, power plants, etc. Such electrical installations are generally tailor-made, according to the specific requirements of the customer.

14 Case M.5701 – VINCI /Cegelec, para. 14.

15 Case COMP/M.2447 – Fabricom/GTI, paras. 20 and 25. See also the reference to this segment in COMP/M.3653 – Siemens / VA Tech, para. 181.

16 Case COMP/M.5701 – VINCI / Cegelec, paras. 22, 23 and 24.

Customers contacted in the market investigation broadly confirmed a distinction between electrical, mechanical and air-conditioning engineering services by pointing to the distinct knowledge required. They also acknowledged differences in the engineering services in the infrastructure, industry and tertiary sectors as discussed above. Competitors appear to consider that the suppliers and the competition conditions appear to be rather similar for the three types of engineering services and for the three sectors, but nevertheless consider that it is difficult for an enterprise specialised in a certain type of engineering to expand its activities in another type of engineering, while such expansion would be only possible for certain types of services. With respect to a potential sub-market for power lines, the respondents highlighted the specific know-how required and customers identified a number of companies specialized in electrical engineering for power lines. In addition, a majority of respondents consider with respect to power lines that the suppliers and competitive conditions are very similar between installation and maintenance services.

12. Nevertheless, for the purposes of the present case, the product market definition can be left open as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definition.

Relevant geographic market

13. The Notifying Party submits that the relevant markets for all types of electrical engineering are generally national. While it at the same time does not entirely rule out the possibility that in larger Member States like Germany, some sub-segments might be rather regional, it rejects this possibility for smaller Member States like the Czech Republic.
14. This is broadly in line with previous Commission practice, where electrical engineering markets were in most cases considered to be at least national in scope, although the decision was ultimately left open.¹⁷ In the most recent decision in *VINCI / Cegelec*, the Commission, nevertheless, also considered regional markets for a number of sub-segments within electrical engineering, given that there were several regional players in France.¹⁸ However, for the potential subsegments of power lines, telecommunication networks and electrical sub-station electrical engineering services, the market investigation in that case suggested that the geographic scope for the provision of these services was most likely national because the competitive conditions were similar throughout France.¹⁹
15. The replies to the market investigation in the present case broadly confirm that for the provision of electrical engineering services and in particular for the power lines potential subsegment there are no important differences in the competitive conditions between the different regions of the Czech Republic.
16. Nevertheless, for the purposes of the present case, the geographic market definition can be left open, as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative geographic market definition.

(4) COMPETITIVE ASSESSMENT

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

18 Case COMP/M.5701 – VINCI / Cegelec, paras. 26 to 32.

19 Case COMP/M.5701 – VINCI / Cegelec, para. 33.

17. The Notifying Party submits, based on data supplied by the independent consultancy Pöyry Management Consulting, that with the exception of the Czech Republic there are no affected markets in either Germany (the Member State where EVT Business derives approximately 85% of its turnover) or any of the other Member States where the Parties' activities overlap (Austria, Hungary, Italy, and Slovakia). The Parties' combined market shares would in all these Member States be lower than 15% even under the narrowest market segmentations previously considered by the Commission for any of the electrical and the mechanical engineering markets, and including regions for larger Member States like Germany for the electrical engineering services.
18. Based on the analysis of the information submitted by the Notifying Party and the market share estimations of Pöyry Management, competition concerns in any of the above Member States where there are no affected markets can therefore be excluded.
19. As mentioned above, the only notable exception arises in the Czech Republic where the transaction will lead to an affected market, notably the potential market for power lines engineering services, for which the Notifying Party has provided additional information and which is assessed below.

Power lines engineering services in the Czech Republic

20. Based on the market definitions applied in the previous Commission practice and the information supplied by the Notifying Party, the only affected market, i.e. the only market with market shares above 15% and an overlap between the Parties' activities, is the potential subsegment for power lines electrical engineering services in the Czech Republic where the combined market share would amount to [20-30]% [VINCI: [5-10]%; the EVT Business: [10-20]%.²⁰.
21. The Notifying Party submits that the combined market share post transaction remains well below 25% (in the absence of further segmentation of this potential segment into installation and maintenance, the combined market shares of the Parties would not exceed [20-30]%) and that four strong competitors will remain active in the Czech market. Among them it mentions EPH group (with a market share of [30-40]% in the Czech market for overhead lines and substations together as it could not provide separate market shares were provided for power lines only), SAG and the subsidiaries of the international groups GDF-Suez and E.ON. According to the Notifying Party the financial clout of these competitors counter-balances the increase in the merged entity's market share, especially given that projects in this market are largely awarded on the basis of tenders.
22. Moreover, the Notifying Party further submits that the demand side is similarly dominated by a few large and powerful customers such as ČEPS, ČEZ and E.ON Česká Republika. According to the Notifying Party, these companies organize tenders for projects exceeding certain thresholds and use the best price as the main criterion of selection. In certain cases the projects include material and cables, while in other cases the materials are bought directly by the customer itself while the engineering services supplier only brings study, management of the project and people to realize the project.

20 The Notifying Party was not able to provide market shares for its main competitors in this market.

23. Customers and competitors contacted in the market investigation have confirmed that the transaction will not have a significant impact on the competitive situation in the market for power lines or any other relevant market in the Czech Republic. In particular, customers have identified between three and eight suppliers as credible alternatives to the Parties in the provision of power lines engineering services in the Czech Republic, while the analysis of the competitors' replies confirms that alternative suppliers of similar size are able to respond to the increase in demand for power lines engineering services. The Commission thus finds that sufficient alternative providers will remain post transaction in the Czech market for power lines that are able to offer their services in this subsegment and to constitute a sufficient competitive constraint on the merged entity.
24. Based on the above, the Commission concludes that the transaction does not raise serious doubts as to its compatibility with the internal market.

(5) CONCLUSION

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

*For the Commission
(signed)*

*Štefan FÜLE
Member of the Commission*