



EUROPEAN COMMISSION
DG Competition

PUBLIC VERSION

Case M.10311- ENEL X / VWFL / JV

Only the English text is available and authentic.

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

Article 9(3)
Date: 17/9/2021

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 Where possible the information omitted has been replaced by ranges of figures or a general description.



Brussels, 17.9.2021
C(2021) 6915 final

COMMISSION DECISION

of 17.9.2021

**relating to Article 9 of Regulation (EC) No 139/2004
referring to case M.10311 - ENEL X / VWFL / JV**

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COMMISSION DECISION

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**relating to Article 9 of Regulation (EC) No 139/2004
referring to case M.10311 - ENEL X / VWFL / JV**

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the ‘TFEU’)¹,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings² (the ‘Merger Regulation’), and in particular Article 9(3) thereof,

Having regard to the notification made by Enel X S.r.l. and Volkswagen Finance Luxembourg S.A. on 30 July 2021, pursuant to article 4 of the said Regulation,

Having regard to the request of the Autorità Garante della Concorrenza e del Mercato of 18 August 2021,

Whereas:

- (1) On 30 July 2021, the European Commission received the notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004 (“the EU Merger Regulation”) by which Enel X S.r.l. (“Enel X”), established in Italy, and Volkswagen Finance Luxembourg S.A. (“VWFL”), established in Luxembourg, intend to acquire, within the meaning of Article 3(1)(b) and 3(4) of the EU Merger Regulation, joint-control over a newly-created joint venture established in Italy (the “JV”) (the “Proposed Concentration”). In this decision, Enel X and VWFL are referred to as “the Notifying Parties”, together with the JV “the Parties”.
- (2) The Proposed Concentration was initially notified under the simplified procedure for joint ventures with limited turnover and assets.³ The Italian national competition authority, i.e. Autorità Garante della Concorrenza e del Mercato (“the AGCM”) received a copy of the notification on 30 July 2021.

¹ OJ C 115, 9.8.2008, p.47.

² OJ L 24, 29.1.2004, p.1. 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.

³ The Commission accepted the notification on the basis of the information provided by the Notifying Parties and on condition that a targeted market investigation would confirm the Notifying Parties’ arguments on competitors’ expansion plans in the market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy.

- (3) By letter dated 18 August 2021, Italy, via the AGCM requested the referral to its competition authority of the Proposed Concentration with a view to assessing it under national competition law, pursuant to article 9(2)(a) of the EU Merger Regulation (“the Referral Request”).

1. THE PARTIES

- (4) Enel X is a wholly-owned subsidiary of Enel S.p.A., which is the parent company of the Enel Group (all together, “Enel Group”), a multinational Italian energy group, active in the electricity and natural gas sectors as well as in the development and supply of innovative products and solutions aimed at enabling energy transition, including e-mobility.
- (5) VWFL is a wholly-owned subsidiary of Volkswagen AG, which is the parent company of the Volkswagen Group (all together “VW Group”), a German group active worldwide in the design, manufacture, sale and distribution of passenger cars, light commercial vehicles, trucks, buses, coaches, chassis for buses and diesel engines, motor bikes and ancillary financial and insurance services as well as mobility service solutions. Moreover, via its controlling share Ionity (a joint venture between VW Group and other car manufacturers), VW is also active in the market for public ultra-fast charging stations for electric vehicles.
- (6) The JV will invest in, own, install, operate and maintain a network of publicly accessible ultra-fast charging stations (i.e. with power above 100 kW and up to 350 kW) for electric vehicles in Italy.

2. THE OPERATION AND PROPOSED CONCENTRATION

- (7) The Proposed Concentration consists of the acquisition by Enel X and VWFL of joint-control within the meaning of Article 3(1)(b) and 3(4) of the EU Merger Regulation over a newly established JV by way of subscription/purchase of shares.
- (8) It follows that the proposed concentration constitutes a concentration within the meaning of Article 3(1)(b) and 3(4) of the EU Merger Regulation.

3. UNION DIMENSION

- (9) The Proposed Concentration has an EU dimension within the meaning of Article 1(2) of the EU Merger Regulation. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Enel Group: EUR 62 623 million in 2020; VW Group: EUR 222 884 million in 2020) and each of at least two of them has a Union-wide turnover of more than EUR 250 million (Enel Group: EUR [...] million in 2020; VW Group: EUR [...] million in 2020). The undertakings concerned do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

4. THE ARTICLE 9 REFERRAL REQUEST

- (10) By letter dated 18 August 2021, the AGCM requested a referral of the whole case to Italy pursuant to Article 9(2)(a) of the EU Merger Regulation with a view to assessing it under its national competition law. In its request, the AGCM submits that all legal requirements for a referral under Article 9(2)(a) of the EU Merger Regulation are met. As a result, the case was reverted to the standard procedure under Article 10(1) of the EU Merger Regulation. On 19 August 2021, the

Commission informed the Member States of the Referral Request and asked the Notifying Parties to provide observations by 26 August 2021.

- (11) First, the AGCM observes that the Proposed Concentration only relates to markets whose geographic scope is limited to Italy (with the only exception of a potential market for the supply of hardware for the installation of charging points, which the AGCM considers being a possible sub-category of the market for the wholesale supply of electric vehicle charging stations).
- (12) Second, the AGCM considers that, based on the information provided by the Notifying Parties, the Proposed Concentration is likely to significantly affect competition in the Italian market for the installation and operation of public ultra-fast charging stations for electric vehicles, where the Parties' activities overlap. In this market, VW Group and Enel Group are the two largest operators with market shares of [50-60]% and [10-20]%, respectively. The AGCM further observes that no sufficient evidence has been adduced to support the Notifying Parties' claim that Tesla will open its Supercharger network to electric vehicles of all other manufacturers (if so, the Parties' combined market share would significantly reduce). Therefore, although the AGCM acknowledges that the market concerned is fast moving, the AGCM submits that it cannot be ruled out that the Parties will maintain the same strong position in the upcoming years as they would have immediately after the Proposed Concentration. In addition, the AGCM notes that it cannot be excluded that the Proposed Concentration will lead to foreclosure effects on markets/potential markets upstream and downstream⁴ to the market for the installation and operation of publicly available electric vehicle ultra-fast charging stations (two of which the AGCM considers that the Parties failed to properly consider and assess in their notification).
- (13) Finally, the AGCM is of the opinion that it is in the best position to deal with the case since: (i) the Proposed Concentration will have competitive effects only in Italy; (ii) the AGCM has past specific experience in dealing with the above and related markets. Moreover, the AGCM emphasises that, should the Commission accept the Referral Request, the benefit of the one-stop-shop principle would be preserved.

5. RELEVANT MARKETS

- (14) The Parties are both active in the installation and operation of publicly available ultra-fast electric vehicle charging stations in Italy. Enel X already operates publicly available ultra-fast charging stations for electric vehicles in Italy. Based on the information provided by the Notifying Parties, Enel X will [Strategic Market Plans]. The VW Group, via Ionity, a joint venture controlled by VW Group and other car manufacturers, also operates publicly available ultra-fast charging stations for electric vehicles in Italy. Therefore, the Parties' activities give rise to a horizontal overlap in the market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy.

⁴ These are the markets for the: (ii) retail supply of electricity to large customers connected to the high and medium voltage grid in Italy; (iii) supply of white-label services for public electric vehicles charging stations in Italy; (iv) the supply of hardware for the installation of charging points in Italy; (v) provision of subscription services for public electric vehicle charging stations in Italy; (vi) and manufacture and sale of electric vehicles in Italy.

- (15) Both Enel Group and VW Group (but not the JV) are also active in the provision of subscription services for public electric vehicles charging stations in Italy. Moreover, Enel Group is also active in: (i) the retail supply of electricity to large customers connected to the medium and high voltage grid in Italy; (ii) the supply of white-label services for public electric vehicles charging stations in Italy. VW Group is active in the manufacture and sale of electric vehicles in Italy. Although neither Enel Group nor VW Group are currently active in the supply of hardware for the installation of charging points,⁵ the Parties appear to have agreed that [Strategic Market Plans]. Therefore, the Parties' activities give rise to the following vertical links. Upstream, the market for retail supply of electricity to large customers connected to the high and medium voltage grid, the (potential) market for the supply of hardware for the installation of charging points and the market for the supply of white-label services for public electric vehicle charging stations. Downstream, the market for the provision of subscription services for public electric vehicle charging stations. Potentially both upstream and downstream: the market for the manufacture and sale of electric vehicles.
- (16) Therefore, the Proposed Concentration concerns the following six product and geographic markets: (i) the installation and operation of public ultra-fast charging stations for electric vehicles in Italy; (ii) the retail supply of electricity to large customers connected to the high and medium voltage grid in Italy; (iii) the supply of white-label services for public electric vehicles charging stations in Italy; (iv) the supply of hardware for the installation of charging points in Italy; (v) the provision of subscription services for public electric vehicle charging stations in Italy; (vi) and the manufacture and sale of electric vehicles in Italy. For the purpose of this decision, the above-mentioned six product and geographic markets are referred to as "the Relevant Markets".

5.1. PRODUCT MARKETS

5.1.1. Introduction

- (17) For the purpose of this decision, the Commission will carry out its competitive assessment on the product markets as described below, in line with the information submitted by the Notifying Parties and the recent and established decisional practice of the Commission. The Commission notes that the Commission's assessment is based on a preliminary analysis and without prejudice to the outcome of the AGCM's investigation.⁶

5.1.2. *The installation and operation of publicly available ultra-fast charging stations for electric vehicles*

- (18) In its decision in case M.8870 – *E.ON/Innogy*, the Commission, after an in-depth market investigation, has considered the market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles to be a distinct product market from regular charging stations and from fast charging stations.⁷ The

⁵ As acknowledged by the Notifying Parties, Enel Group would have [Manufacturing and Distribution Structure]. See The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, footnote 4.

⁶ Commission Notice on Case Referral in respect of concentrations ('Referral Notice'), OJ C 56, 05.03.2005, p. 2, paragraphs 35-36.

⁷ Case M.8870 – E.ON/Innogy, paragraphs 190-193.

Commission left open whether regular and fast charging stations belong to the same market or are two separate markets.⁸

- (19) The Notifying Parties agree with a segmentation of the installation and operation of charging stations for electric vehicles by charging speed: regular charging speed with charging capacity up to 22 kW; fast charging speed with charging capacity from 22 to 100 kW and ultra-fast charging speed from 100 to 350 kW. The Notifying Parties also agree that public charging stations should be distinguished from private charging stations.⁹ Further, the Notifying Parties submit that a sub-segmentation between ultra-fast electric vehicle charging stations on and off-motorways cannot, at the current stage of the project, be drawn. The Notifying Parties further submit that the future development of on and off-motorways market segments can hardly be predicted. Moreover, the Notifying Parties submit that, even if the JV intends to focus on [Strategic Market Plans], their exact locations have yet to be decided.¹⁰ The Notifying Parties submit that the relevant market in this case should be defined as the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy.
- (20) Therefore, for the purpose of this decision, the Commission will carry out its competitive assessment on the market for the installation and operation of public ultra-fast charging stations for electric vehicles.

5.1.3. *The retail supply of electricity to large customers connected to the high and medium voltage grid*

- (21) In its previous practice, the Commission has considered the market for the retail supply of electricity to large customers connected to the high and medium voltage grid.¹¹
- (22) The Notifying Parties agree with a segmentation of the retail supply of electricity to final consumers by customer size, i.e. the market for retail supply of electricity to large customers that are connected to the high and medium voltage grid and the market for retail supply of electricity to small industrial and residential customers that are connected to the low voltage grid.¹² The Notifying Parties therefore submit that the relevant market in this case should be defined as the market for the retail supply of electricity to large customers to the high and medium voltage grid.¹³
- (23) Therefore, for the purpose of this decision, the Commission will carry out its competitive assessment on the market for the retail supply of electricity to large customers connected to the high and medium voltage grid.

5.1.4. *The supply of white-label services for public electric vehicles charging stations*

- (24) In its recently adopted decision in case M.8870 – E.ON/Innogy, the Commission, after an in-depth market investigation, has considered, *inter alia*, the market for the supply of white-label services for public electric vehicles charging stations to be a separate product market.¹⁴ These are (i) back-end IT services that charging point

⁸ Case M.8870 – E.ON/Innogy, paragraph 190.

⁹ Form CO, paragraph 123.

¹⁰ Form CO, paragraph 130.

¹¹ Case M.8234 – ENEL / CDP EQUITY / CASSA DEPOSITI E PRESTITI / ENEL OPEN FIBER / METROWEB ITALIA, paragraph 22.

¹² Form CO, paragraph 146.

¹³ Form CO, paragraph 147.

¹⁴ Case M.8870 – E.ON/Innogy, paragraphs 214-216.

operators need to operate charging stations, i.e. to manage network access and to monitor and manage problems with maintenance tools as well as payment solutions; (ii) front-end applications needed by subscription service providers that allow customers to find available charging stations and to execute payments.

(25) The Notifying Parties agree that the relevant market in this case should be defined as the market for the supply of white-label services for public electric vehicles charging stations, including both back-end and front-end services.¹⁵

(26) Therefore, for the purpose of this decision, the Commission will carry out its competitive assessment on the market for the supply of white-label services for public electric vehicles charging stations.

5.1.5. *The supply of hardware for the installation of points of charge*

(27) In its decision in case M.8870 – *E.ON/Innogy*, the Commission, after an in-depth market investigation, has considered the market for the wholesale supply of electric vehicle charging stations but it left the exact product market definition open.¹⁶ The AGCM identifies a potential market for the supply of hardware for the installation of charging points, which it considers being a possible sub-category of the market for the wholesale supply of electric vehicles charging stations.

(28) The Notifying Parties submit that a relevant market for the supply of hardware for the installation of ultra-fast points of charge should not be defined since neither Enel Group nor VW Group would be currently active in this market.¹⁷

(29) In light of the above, the Commission considers that, for the purpose of this decision and without prejudice to further investigation by the AGCM, the question whether the supply of hardware for the installation of points of charge constitute a distinct market can be left open. The criteria of Article 9(2)(a) of the EU Merger Regulation are met, since, as explained in **Section 7** below, the Proposed Concentration threatens to significantly affect competition in the market for the installation and operation of public ultra-fast charging stations in Italy, which present all the characteristics of distinct markets.

5.1.6. *The provision of subscription services for public electric vehicles charging stations*

(30) In its decision in case M.8870 – *E.ON/Innogy*, the Commission, after an in-depth market investigation, has considered the market for the provision of subscription services for public electric vehicle charging stations, although the Commission left open the precise product market segmentation.¹⁸

(31) The Notifying Parties agree that the provision of subscription services to access public electric vehicles charging stations is a distinct product market from that for the installation and operation of public electric vehicles charging stations.¹⁹ However, the Notifying Parties submit that the market should not be segmented further by charging capacity. Indeed, from the e-mobility service providers' perspective, there would be no difference in contracting regular, fast and ultra-fast electric vehicle charging stations and the technical solutions to grant access to customers do not

¹⁵ Form CO, paragraph 154.

¹⁶ Case M.8870 – *E.ON/Innogy*, paragraphs 204-206.

¹⁷ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 2. 2.

¹⁸ Case M.8870 – *E.ON/Innogy*, paragraphs 210-212.

¹⁹ Form CO, paragraph 161.

differ for any of the electric vehicle charging stations. Moreover, the Notifying Parties consider that the e-mobility service providers have every incentive to contract both regular, fast and ultra-fast charging stations due to their business model relying on the ability to grant access to their customers to the largest number of electric vehicle charging stations.²⁰ The Notifying Parties therefore submit that the relevant market in this case should be defined as the market for the provision of subscription services for public electric vehicles charging stations.²¹

- (32) Therefore, for the purpose of this decision and following its previous practice, the Commission will carry out its competitive assessment on the market for the provision of subscription services for public electric vehicles charging stations.

5.1.7. *The manufacture and sale of electric vehicles*

- (33) In its previous decisions, such as in case M.8744 – *Daimler/BMW/Car Sharing JV*, the Commission has considered a segmentation of the market for the manufacture and sale of passenger cars on the basis of car categories: (i) mini cars; (ii) small cars; (iii) medium cars; (iv) large cars; (v) executive cars; (vi) luxury cars; (vii) sport cars; (viii) sport utility vehicles ("SUV"s) and (ix) multipurpose vehicles. For the SUV segment, a further division into (i) small, (ii) medium and (iii) large SUVs has been considered.²² Moreover, the Commission has considered whether electric cars constitute a separate product market and whether this possible market should be further segmented according to (i) technology (electric battery cars and hybrid cars) or (ii) the categories defined for vehicles with combustion engines.²³ However, the Commission left the market definition open in these cases.
- (34) The Notifying Parties submit that there is no vertical link between the installation and operation of public ultra-fast charging stations and the production and sale of electric vehicles.²⁴ Indeed, the Notifying Parties consider that the production and sale of electric vehicles do not constitute a level along the value chain for the installation and operation of public ultra-fast charging stations. Therefore, the Notifying Parties submit that the production and sale of electric vehicles is not a necessary input for the installation and operation of public ultra-fast charging stations, meaning that there is no vertical link.²⁵
- (35) Therefore, for the purpose of this decision, the Commission will carry out its competitive assessment on the market for the manufacture and sale of electric vehicles.

²⁰ Form CO, paragraph 161.

²¹ Form CO, paragraph 161.

²² Case M.8744 – *Daimler/BMW/Car Sharing JV*, paragraph 77. See also M.8449 – *Peugeot/Opel*, paragraph 12.

²³ Case M.8744 – *Daimler/BMW/Car Sharing JV*, paragraph 77. See also M.8449 – *Peugeot/Opel*, paragraphs 14 and ff.

²⁴ Form CO, paragraph 178.

²⁵ Form CO, paragraph 180.

5.1.8. *Conclusion on the product markets*

(36) Based on the above, for the purpose of this decision and without prejudice to further investigation by the AGCM, the Commission will consider the following markets and segmentations:

- The installation and operation of publicly available electric vehicle ultra-fast charging stations;
- The retail supply of electricity to large customers connected to the high and medium voltage grid;
- The supply of white-label services for public electric vehicles charging stations;
- The supply of hardware for the installation of charging points;
- The provision of subscription services for public electric vehicle charging stations;
- The manufacture and sale of electric vehicles.

5.2. GEOGRAPHIC MARKETS

5.2.1. *Introduction*

(37) For the purpose of this decision, the Commission will carry out its competitive assessment on the geographic markets as described below, in line with the information submitted by the Notifying Parties and the recent and established decisional practice of the Commission. The Commission notes that the Commission's assessment is based on a preliminary analysis and without prejudice to the outcome of the AGCM's investigation.²⁶

5.2.2. *The installation and operation of publicly available ultra-fast charging stations for electric vehicles*

(38) In its recently adopted decision in case M.8870 – *E.ON/Innogy*, after an in-depth market investigation, the Commission has considered that the geographic scope of the market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles could be left open between local or national with elements of local competition.²⁷

(39) The Notifying Parties submit that the market for the installation and operation of charging stations for electric vehicles could be considered broader than national, possibly EEA-wide, based on a number of arguments.²⁸ First, the Notifying Parties note that there are no general peculiarities with respect to permits required for the installation and operation of public charging stations within the EEA.²⁹ Second, the Notifying Parties note that the Commission's proposal for a regulation on the deployment of alternative fuels infrastructure (repealing Directive 2014/94/EU) intends to harmonise the applicable legal framework in the EU with regard to the provision of charging infrastructure for electric vehicles in the EEA.³⁰ Third, the

²⁶ Commission Notice on Case Referral in respect of concentrations ('Referral Notice'), OJ C 56, 05.03.2005, p. 2, paragraphs 35-36.

²⁷ Case M.8870 – *E.ON/Innogy*, paragraphs 194-203.

²⁸ Form CO, paragraph 139.

²⁹ Form CO, paragraph 140.

³⁰ Form CO, paragraph 141.

Notifying Parties consider that the JV's targeted customers [Strategic Market Plans].³¹

- (40) For the purpose of this decision and following its previous decisional practice, the Commission will carry out its competitive assessment on the market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy.

5.2.3. *The retail supply of electricity to large customers connected to the high and medium voltage grid*

- (41) In its previous practice, the Commission has considered the geographic scope of the market for the supply of electricity to large customers connected to the high and medium voltage grid to be national.³²

- (42) The Notifying Parties agree that the market for the retail supply of electricity to large customers connected to the high and medium voltage grid is national in scope. Therefore, for the purpose of the Proposed Concentration, the Notifying Parties consider that the geographic market for the retail supply of electricity to large customers connected to the high and medium voltage grid should be Italy.³³

- (43) For the purpose of this decision and following its previous decisional practice, the Commission will carry out its competitive assessment on the market for the retail supply of electricity to large customers connected to the high and medium voltage grid in Italy.

5.2.4. *The supply of white-label services for public electric vehicles charging stations*

- (44) In its decision in case M.8870 – E.ON/Innogy, after an in-depth market investigation, the Commission has considered that the geographic scope of the market for the supply of white-label services for public electric vehicles charging stations is national.³⁴

- (45) The Notifying Parties consider that the nature of the white-label services for public electric vehicles charging stations and of the companies that develop and offer them support the view that the geographic scope is wider than national. Indeed, the Notifying Parties submit that the market for the supply of white-label services for public electric vehicles charging stations should be global or, at least, EEA-wide.³⁵

- (46) Therefore, for the purpose of this decision and following its previous decisional practice, the Commission will carry out its competitive assessment on the market for the supply of white-label services for public electric vehicles charging stations in Italy.

5.2.5. *The supply of hardware for the installation of charging points*

- (47) In its recently adopted decision in case M.8870 – E.ON/Innogy, the Commission, after an in-depth market investigation, has considered that the geographic scope of the market for the wholesale supply of electric vehicle charging stations could be left

³¹ Form CO, paragraph 142.

³² Case M.8234 – ENEL / CDP EQUITY / CASSA DEPOSITI E PRESTITI / ENEL OPEN FIBER / METROWEB ITALIA, paragraphs 22-23.

³³ Form CO, paragraph 149.

³⁴ Case M.8870 – E.ON/Innogy, paragraph 216.

³⁵ Form CO, paragraph 156.

open between EEA and national.³⁶ The AGCM identifies a potential market for the supply of hardware for the installation of charging points, which it considers being a possible sub-category of the market for the wholesale supply of EV charging stations.³⁷

(48) The Notifying Parties submit that the (potential) market for the supply of hardware for the installation of charging points should be considered as wider than national.³⁸

(49) For the purpose of this decision, the Commission will carry out its competitive assessment on the (potential) market for the supply of hardware for the installation of charging points in Italy for the following reasons. First, the downstream market for the installation and operation of public ultra-fast charging stations for electric vehicles is national in scope. Second, the JV will be active only in Italy. Therefore, the potential effects would develop mainly if not exclusively at national level.

5.2.6. *The provision of subscription services for public electric vehicles charging stations*

(50) In its decision in case M.8870 – *E.ON/Innogy*, the Commission, after an in-depth market investigation, has considered the geographic scope of the market for the provision of subscription services for public electric vehicle charging stations to be national.³⁹

(51) The Notifying Parties submit that the market for the provision of subscription services for public electric vehicle charging stations could be considered as broader than national, possibly EEA-wide as, inter alia, there would be no interoperability limitations for operators based in different Member States.⁴⁰

(52) For the purpose of this decision and following its previous decisional practice, the Commission will carry out its competitive assessment on the market for the provision of subscription services for public electric vehicles charging stations in Italy.

5.2.7. *The manufacture and sale of electric vehicles*

(53) In its previous decisions, such as in case M.8744 – *Daimler/BMW/Car Sharing JV*, the Commission has considered that the geographic scope of the market for the manufacture and sale of passenger cars could be left open between EEA and national.⁴¹

(54) The Notifying Parties do not submit any arguments on the geographic scope of the market for the manufacture and sale of electric vehicles.

(55) For the purpose of this decision, the Commission will carry out its competitive assessment on the market for the manufacture and sale of electric vehicles in Italy for the following reasons. First, the upstream or downstream market for the installation and operation of public ultra-fast charging stations for electric vehicles is national in scope. Second, the JV will be active only in Italy. Therefore, the potential effects would develop mainly if not exclusively at national level.

³⁶ Case M.8870 – *E.ON/Innogy*, paragraphs 204-206.

³⁷ Case M.8870 – *E.ON/Innogy*, paragraphs 204-206.

³⁸ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 2.

³⁹ Case M.8870 – *E.ON/Innogy*, paragraphs 212.

⁴⁰ Form CO, paragraphs 167-169.

⁴¹ Case M.8744 – *Daimler/BMW/Car Sharing JV*, paragraph 123.

5.2.8. *Conclusion on the geographic markets*

(56) Based on the above, for the purpose of this decision and without prejudice to further investigation by the AGCM, the Commission will consider the following geographic market definitions:

- The installation and operation of publicly available electric vehicle ultra-fast charging stations (local or national with elements of local competition);
- The retail supply of electricity to large customers connected to the high and medium voltage grid (national);
- The supply of white-label services for public electric vehicles charging stations (national);
- The supply of hardware for the installation of charging points (national);
- The provision of subscription services for public electric vehicle charging stations (national);
- The manufacture and sale of electric vehicles (national).

6. **COMPETITIVE ASSESSMENT**

(57) The Proposed Concentration gives rise to horizontal overlaps between the Parties' activities in the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy.

(58) Furthermore, the Proposed Concentration gives rise to vertical links between the Parties' activities in, on the one hand, the installation and operation of publicly available electric vehicle ultra-fast charging stations and, on the other hand, the following upstream or downstream markets or potential markets: (i) the retail supply of electricity to large customers connected to the high and medium voltage grid in Italy; (ii) the supply of white-label services for public electric vehicles charging stations in Italy; (iii) the supply of hardware for the installation of charging points in Italy; (iv) the provision of subscription services for public electric vehicle charging stations in Italy; (v) the manufacture and sale of electric vehicles in Italy.

(59) The Proposed Concentration was notified under the simplified procedure for joint ventures with limited turnover and assets⁴², based on the information submitted by the Notifying Parties that their current strong combined market position in the market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles would quickly be eroded by the expansion of competitors.

6.1. **The installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy (horizontal overlap)**

6.1.1. *The Notifying Parties' views*

(60) The Notifying Parties submit that the Proposed Concentration will not give rise to any significant competition concerns for a number of reasons. First, the Italian

⁴² The Commission accepted the notification on the basis of the information provided by the Notifying Parties and on condition that a targeted market investigation would confirm the Notifying Parties' arguments on competitors' expansion plans in the market for the installation and operation of publicly available ultra-fast electric vehicles charging stations in Italy.

market for ultra-fast electric vehicle charging stations is still at its infancy stage and still in the process of being created and developed.⁴³ Second, there would be a plurality of players launching new infrastructure projects, leading to a significant increase of the current number of public ultra-fast points of charge available in the future.⁴⁴ Third, the JV's projected market shares in 2025 should be around [20-30]%, meaning that they do not indicate any strong market position as a result of the Proposed Concentration.⁴⁵ Fourth, the JV (to which Enel X will [Strategic Market Plans] and Ioney – both owned by different companies of the VW Group and with different partners – will, after the Proposed Concentration, fully compete on the Italian market for the publicly available ultra-fast electric vehicle charging stations.⁴⁶ Fifth, the Proposed Concentration is pro-competitive as it creates a new significant player in a market which is still at an infancy stage, whose development is contributing to the transition towards e-mobility in Italy.⁴⁷

6.1.2. *The Commission's assessment*

- (61) The Commission, based on its preliminary assessment, identifies several factors indicating that the Proposed Concentration would threaten to significantly affect competition in the market for the installation and operation of publicly available electric vehicle ultra-fast charging stations in Italy.
- (62) First, the Commission notes that, based on the information provided by the Notifying Parties and without prejudice to the AGCM investigation, Enel X's ultra-fast charging points will [Strategic Market Plans]. Even if this [Strategic Market Plans], Enel is already operating these stations. VW is also active in this market in Italy via its jointly controlled joint venture Ioney.
- (63) Consequently, the Commission notes on a preliminary basis that, without prejudice to the AGCM's investigation, there seem to be a situation in which Enel Group and the JV (which will enter the market regardless of whether [Strategic Market Plans] may have a horizontal overlap in this market. In any event, there will be a horizontal overlap between the JV and VW Group (via Ioney) in this market. Moreover, the Commission considers on a preliminary basis, without prejudice to the AGCM investigation, that there is no sufficient evidence that Ioney would compete with the JV in this market after the Proposed Concentration in a fully independent manner.
- (64) Second, contrary to what was claimed by the Notifying Parties, the Parties' combined market share appears to remain high for the near future. Based on the information provided by the Notifying Parties and without prejudice to the AGCM's investigation, the publicly available ultra-fast charging points for electric vehicles in Italy are [100-150]. Of those, [...] (representing [50-60]% of the market) belong to Ioney, a joint venture controlled by VW Group and other car manufacturers, while

⁴³ Form CO, paragraphs 201-207; The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Sections II. 1. and 2.

⁴⁴ Form CO, paragraphs 189-195 and 208-215; The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 2.

⁴⁵ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 2.

⁴⁶ Form CO, paragraphs 197-200.

⁴⁷ Form CO, paragraphs 261-263; The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Sections II. 1. and 2.

[...] (representing [10-20]% of the market) belong to Enel X,⁴⁸ leading to a combined market share of [70-80]%. The remainder belong to beCharge [...] ultra-fast charging points, representing [10-20]% of the market), Free to X [...] ultra-fast charging points, representing [5-10]% of the market), Neogy [...] ultra-fast charging points, representing [5-10]% of the market) and Evway and Duferco Energia [...] ultra-fast charging point each, representing less than [0-5]% of the market each). On the basis of the targeted preliminary market investigation the Commission concludes that the actual number of charging points of the Parties' competitors appears to be lower than estimated by the Notifying Parties.⁴⁹ As a result, the Parties' combined market share would be even higher than [70-80]%

- (65) Third, contrary to the Notifying Parties' claim, it is not clear whether, to what extent and when Tesla's ultra-fast charging points in Italy will become publicly available. Based on the publicly available information provided by the Notifying Parties, Tesla owns 352 ultra-fast charging points in Italy, which are currently only available to Tesla drivers. If those 352 ultra-fast charging points were made publicly available, the total number of ultra-fast charging points in Italy would go up to [450-500] and the Parties' combined market shares would go down to [20-30]%. Based on publicly available information provided by the Notifying Parties, Tesla has plans to make its stations accessible to other car makes. However, the very same publicly available information provided by the Notifying Parties make a number of caveats including potential compatibility issues as well as uncertainties about timing. The targeted preliminary market investigation preliminary confirmed these uncertainties.⁵⁰
- (66) Fourth, the Commission notes on a preliminary basis and without prejudice to the AGCM investigation that it is not clear at what pace competitors' expansion is coming. The Commission accepts that, given the fast-moving nature of this market, it cannot be excluded that other operators will enter and/or expand in this market, also thanks to the incentives offered by the National Plan of Recovery and Resilience ("PNRR"). Indeed, if, on the one hand, it cannot be excluded that the PNRR will boost entry and expansion, on the other hand, it cannot be excluded that it can also strengthen the Parties' market position. As also acknowledged by the Notifying Parties themselves, there is a significant discrepancy in the estimated market shares between the business plan of the JV (according to which the JV would have a market share of about [70-80]% in 2025) and the notification (according to which the JV would have a market share of <[30-40]% in 2025).⁵¹

6.1.3. Conclusion

- (67) In light of the above considerations, based on its preliminary assessment and without prejudice to further investigation by the AGCM, the Commission considers that the Proposed Concentration would threaten to significantly affect competition in the market for the installation and operation of ultra-fast charging stations for electric vehicles in Italy.

⁴⁸ The Notifying Parties submit that Enel X will then, subject to the agreement of certain third parties/investors as well as of the Italian Government, [Strategic Market Plans].

⁴⁹ Commission's non-confidential RFI 1 to Free to X of 3 August 2021 and to beCharge of 7 August 2021.
⁵⁰ Commission's non-confidential RFI 2 to Tesla of 18 August 2021, questions 1-5.

⁵¹ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, page 4. See also the AGCM's Referral Request, page 12.

6.2. The retail supply of electricity to large customers connected to the high and medium voltage grid (upstream)

6.2.1. The Notifying Parties' views

(68) The Notifying Parties submit that the Proposed Concentration will not give rise to any significant competition concerns for the following main reasons. First, the market for the supply of electricity to large customers connected to the high and medium voltage grid is fully liberalised in Italy and highly competitive with a large number of suppliers active therein.⁵² Second, the VW group is not active in Italy in the supply of electricity to non-household customers.⁵³ Third, there will be no preferential relationship between the Enel group and the JV's sourcing of its electricity requirements. In fact, the JV will select its electricity supplier through an open and competitive tender process.⁵⁴ For these reasons, the Notifying Parties submit that the Proposed Concentration does not raise customer foreclosure's concerns.⁵⁵

6.2.2. The Commission's assessment

(69) The Commission considers that, given the fast-moving nature of the market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy, it cannot be excluded that the Proposed Concentration would lead to foreclosure effects on the upstream market for the retail supply of electricity to large customers connected to the high and medium voltage grid for the following reasons.

(70) First, based on the information provided by the Notifying Parties, electricity represents the main cost element in the operation of publicly available ultra-fast charging points as it covers [40-50]% of the revenues.⁵⁶ [90-100]% of the ultra-fast charging points that will be installed and operated by the JV will be connected to the medium voltage grid.

(71) Second, the Commission considers on a preliminary basis, without prejudice to the AGCM market investigation that, although there are no elements at this stage to conclude that there are risks of input foreclosure, in light of the fast-moving nature of the downstream market, further investigation appears to be required. The Commission considers that the AGCM is best placed to conduct it.

(72) Third, in terms of customer foreclosure risks, the Commission notes that the Enel Group is the major electricity provider in Italy with a market share of about [20-30]%. Even though the JV will purchase energy through calls for tenders and even though in case of non-adjudication, Enel Group will [Business secret in relation to the Transaction's documents], the Parties agreed that Enel Group would not [Business secret in relation to the Transaction's documents].

(73) Given the Parties' likely strong position in the downstream market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy, further investigation appears to be required. The Commission considers that the AGCM is best placed to conduct it.

⁵² Form CO, paragraph 222.

⁵³ Form CO, paragraph 218.

⁵⁴ Form CO, paragraphs 224 and 225.

⁵⁵ Form CO, paragraphs 227 and 228.

⁵⁶ Annex 5.3-II.1 to the Form CO, page 6 - version of 4 May 2021.

6.2.3. *Conclusion*

(74) In light of the above considerations, based on its preliminary assessment and without prejudice to further investigation by the AGCM, the Commission considers that it cannot be excluded that the Proposed Concentration would lead to input or customer foreclosure and therefore threaten to significantly affect competition in the market for retail supply of electricity to large customers connected to the high and medium voltage grid in Italy.

6.3. **The supply of white-label services for public electric vehicles charging stations (upstream)**

6.3.1. *The Notifying Parties' views*

(75) The Notifying Parties submit that the Proposed Concentration will not give rise to any significant competition concerns for the following main reasons. First, the VW group is not active in the market for the supply of back-end and/or front-end IT (“white label”) services for public electric vehicle charging stations, whereas the Enel Group only has a marginal presence therein.⁵⁷ Second, there would be numerous companies that offer white-label services to charging point operators and electric mobility providers in Italy.⁵⁸ Third, there would be no exclusivity relationship between Enel X and the JV as Enel X will remain free to supply its back-end software solutions to other charging point operators and electric mobility providers active in Italy.⁵⁹ Therefore, the Notifying Parties submit that the Proposed Concentration does not raise any foreclosure concerns in connection with the supply of white-label services for public electric vehicles charging stations.⁶⁰

6.3.2. *The Commission's assessment*

(76) The Commission considers that, given the fast-moving nature of the market for the installation and operation of publicly available electric vehicles ultra-fast charging points in Italy, it cannot be excluded that the Proposed Concentration would lead to foreclosure effects on the upstream market for the supply of white-label services for public electric vehicle charging stations in Italy.

(77) Indeed, the Commission notes that in Italy, among the Parties, only Enel Group (via Enel X) is active in this market in Italy. However, although Enel X's revenues stemming from sales to third parties in this market amounted to less than EUR [...] in 2020, Enel X will supply the JV with the relevant software [Information on Supply Relationship]. Moreover, the Commission notes that the value of such contract would amount to just EUR [...]. However, given the Parties' likely strong position in the downstream market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy, the Commission considers that further investigation appears to be required. The Commission considers that the AGCM is best placed to conduct it.

6.3.3. *Conclusion*

(78) In light of the above considerations, based on its preliminary assessment and without prejudice to further investigation by the AGCM, the Commission considers that it

⁵⁷ Form CO, paragraphs 229 and 230.

⁵⁸ Form CO, paragraph 231.

⁵⁹ Form CO, paragraphs 232 and 233.

⁶⁰ Form CO, paragraph 233.

cannot be excluded that the Proposed Concentration would lead to input or customer foreclosure and therefore threaten to significantly affect competition in the market for the supply of white-label services for public electric vehicles charging stations in Italy.

6.4. The supply of hardware for the installation of charging points (upstream)

6.4.1. The Notifying Parties' views

(79) The Notifying Parties submit that the Proposed Concentration will not give rise to any significant competition concerns for the following main reasons. First, the Enel Group and the VW Group are currently not active in the manufacture and sale of hardware for ultra-fast charging stations to any meaningful extent.⁶¹ Second, only in the event that the JV would decide to start a full-fledged production and sale of hardware for ultra-fast charging stations, [Business secret in relation to the Transaction's documents].⁶² Therefore, the Notifying Parties submit that the Proposed Concentration does not raise foreclosure concerns.⁶³

6.4.2. The Commission's assessment

(80) The Commission considers that, given the fast-moving nature of the market for the installation and operation of publicly available electric vehicles ultra-fast charging points in Italy, it cannot be excluded that the Proposed Concentration would lead to foreclosure effects on the upstream (potential) market for the supply of hardware for the installation of charging points in Italy.

(81) Indeed, while [Strategic Market Plans], the Parties appear to have agreed that both Enel Group and VW Group will [Strategic Market Plans]. For the calls for tender that the JV will issue to procure such hardware, there are [Business secret in relation to the Transaction's documents].

(82) Given the Parties' likely strong position in the downstream market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy, the Commission considers that further investigation appears to be required. The Commission considers that the AGCM is best placed to conduct it.

6.4.3. Conclusion

(83) In light of the above considerations, based on its preliminary assessment and without prejudice to further investigation by the AGCM, the Commission considers that it cannot be excluded that the Proposed Concentration would lead to input or customer foreclosure and therefore threaten to significantly affect competition in the (potential) market for the supply of hardware for the installation of charging points in Italy.

⁶¹ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 2.

⁶² The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 2.

⁶³ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 2.

6.5. The provision of subscription services for public electric vehicle charging stations (downstream)

6.5.1. The Notifying Parties' views

(84) The Notifying Parties submit that the Proposed Concentration will not give rise to any significant competition concerns for the following main reasons. First, Enel X would have a small share in the Italian market for the provision of subscription services for public electric vehicle charging stations. Second, the VW Group (via Elli) would have negligible activity in this market in Italy.⁶⁴ Third, there would be several electricity suppliers to electric vehicles in Italy through their subscription services for public electric vehicle charging stations.⁶⁵ Fourth, there would be no input foreclosure for electric mobility providers competing with Enel X in the Italian market for the provision of subscription services for public electric vehicle charging stations. Indeed, while Enel X will in all likelihood [Strategic Market Plans] (and Elli might possibly do the same, [Strategic Market Plans]), any other third-party operator wishing to offer to its subscribers access to the network of ultra-fast charging points that will be operated by the JV will be able to do so at the same conditions.⁶⁶

6.5.2. The Commission's assessment

(85) The Commission considers that, given the Parties' likely strong position in the upstream market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy, it cannot be excluded that the Proposed Concentration would lead to foreclosure effects on the downstream market for the provision of subscription services for public electric vehicle charging stations in Italy.

(86) Indeed, both Enel X and VW Group (via Volkswagen Group Charging GmbH, "Elli") are active in this market in Italy. Enel X has [20-30]% of the market, while Elli has just entered the market, with a turnover in Italy of just EUR [...] in 2020⁶⁷. Other operators are currently active in Italy, namely Duferco Energia (with [20-30]% of the market), BeCharge (with [20-30]% of the market) and EvWay (with [10-20]% of the market). If, on the one hand, the Notifying Parties argue that subscription service providers would have an incentive to deal with as many upstream operators as they could (and this would be confirmed by the JV's being ready to open in a non-discriminatory way its charging points to downstream operators), on the other hand, such an incentive may cease to exist in case an upstream vertically-integrated operator would gain strong market power.

(87) Given the likely strong position of the Parties on the market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles, the Commission considers that further investigation appears to be required. The Commission considers that the AGCM is best placed to conduct it.

6.5.3. Conclusion

(88) In light of the above considerations, based on its preliminary assessment and without prejudice to further investigation by the AGCM, the Commission considers that it cannot be excluded that the Proposed Concentration would lead to input or customer

⁶⁴ Form CO, paragraphs 235-238.

⁶⁵ Form CO, paragraph 239.

⁶⁶ Form CO, paragraph 241.

⁶⁷ Form CO, footnote 8.

foreclosure and therefore threaten to significantly affect competition in the market for the provision of subscription services for public electric vehicle charging stations in Italy.

6.6. The manufacture and sale of electric vehicles (upstream and/or downstream)

6.6.1. The Notifying Parties' views

(89) The Notifying Parties submit that the Proposed Concentration will not give rise to any significant competition concerns for the following main reasons. First, the Enel Group and the VW Group would neither have the ability nor the incentive to foreclose other charging services' providers or electric vehicle's manufacturers.⁶⁸ Indeed, the network of ultra-fast charging points that will be operated by the JV will be open to third parties on a non-discriminatory basis. Moreover, the VW Group would not have any ability to foreclose rival charging infrastructure providers in Italy as it is not necessary to have access to newly produced electric vehicles from VW Group to operate a charging infrastructure. Second, there would be no costumer foreclosure for other electric vehicle's original equipment manufacturer as car manufacturers do not sell electric vehicles to operators of charging infrastructure nor do they conclude any agreements with operators of charging infrastructure.⁶⁹

6.6.2. The Commission's assessment

(90) The Commission notes that in its previous practice it considered that there is a vertical relationship between the manufacture and sale of (electric) vehicles (upstream) and charging stations (downstream).⁷⁰ Moreover, the Commission cannot exclude at this stage that a vertical relationship may exist between charging stations (upstream) and the manufacture and sale of (electric) vehicles (downstream).

(91) The Commission considers that, given the likely strong position of the Parties on the market for the installation and operation of publicly available ultra-fast charging stations for electric vehicles in Italy, it cannot be excluded that the Proposed Concentration would lead to foreclosure effects on the upstream/downstream market for the manufacture and sale of electric vehicles in Italy.

(92) Indeed, based on the information submitted by the Notifying Parties,⁷¹ car manufacturers are expected to represent one category of the JV's customers. Car manufacturers will indeed directly purchase the necessary services (such as a package of kWh for the first start of the electric vehicle battery) from the JV to be included in the sale of each new electric vehicle. Once terminated, the end-customer of the car manufacturer will be able to switch to services offered by subscription service providers. For this type of demand, there is a specific pricing model (a one-off-fee), which slightly lower than the price level for other types of demand.

(93) The Commission therefore considers that further investigation appears to be required and that the AGCM is best placed to conduct it.

6.6.3. Conclusion

(94) In light of the above considerations, based on its preliminary assessment and without prejudice to further investigation by the AGCM, the Commission considers that it

⁶⁸ Form CO, paragraph 181.

⁶⁹ Form CO, paragraph 184.

⁷⁰ Case M.8744 – Daimler/BMW/Car Sharing JV, paragraphs 277 and ff.

⁷¹ Form CO, Annex 5.3. II.1, page 13.

cannot be excluded that the Proposed Concentration would lead to input or customer foreclosure and therefore threaten to significantly affect competition in the market for the manufacture and supply of electric vehicles in Italy.

7. ASSESSEMENT UNDER ARTICLE 9(3) OF THE MERGER REGULATION

7.1. The criteria of Article 9(2)(a) of the Merger Regulation

- (95) According to Article 9(3) of the EU Merger Regulation, the Commission may refer the whole or part of the case to the competent authorities of the Member State concerned with a view to applying the Member State's national competition law if, following a request for referral by that Member State pursuant to Article 9(2) of the EU Merger Regulation, the Commission considers that the Proposed Concentration threatens to significantly affect competition in a market within that Member State, which presents all the characteristics of a distinct market.
- (96) In order for a referral request to be made to a Member State, one procedural and two substantive conditions must be fulfilled pursuant to Article 9(2)(a) of the Merger Regulation.
- (97) Regarding the procedural condition, the referral request must be made within 15 working days from the date on which a copy of the notification of a concentration to the Commission is received by that Member State. Italy, via the AGCM, received a copy of the notification of the Proposed Concentration on 30 July 2021. The Referral Request was made by letter received by the Commission on 18 August 2021. Therefore, the Referral Request was made within 15 working days following the receipt of the notification of the Proposed Concentration, and, consequently, within the deadline set out in Article 9(2) of the EU Merger Regulation.
- (98) As to the substantive conditions, first, the requesting Member State is required to demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse impact on competition, and thus that it deserves scrutiny. Such preliminary indications may be in the nature of *prima facie* evidence of such a possible significant adverse impact, but would be without prejudice to the outcome of a full investigation.⁷² Second, the requesting Member State is required to show that the geographic market(s) in which competition is affected by the transaction is (are) national or narrower than national in scope and present(s) all the characteristics of (a) distinct market(s).⁷³

7.1.1. Markets within Italy which present all the characteristics of distinct markets

- (99) The AGCM observes that, as indicated by recent and established Commission's decisional practice, the Proposed Concentration relates to markets whose geographic scope is either national or at least national.
- (100) The AGCM further observes that the Proposed Concentration only relates to markets whose geographic scope is limited to Italy (with the only exception of the potential market for the supply of hardware for the installation of charging points, which the

⁷² Commission Notice on Case Referral in respect of concentrations ('Referral Notice'), OJ C 56, 05.03.2005, p. 2, paragraph 35.

⁷³ Referral Notice, paragraph 36.

AGCM considers being a possible sub-category of the market for the wholesale supply of electric vehicles charging stations).

- (101) The Notifying Parties contest the AGCM's conclusion that the Proposed Concentration solely affects markets within Italy, which present all the characteristics of distinct markets.⁷⁴ Indeed, the Notifying Parties submit that, generally speaking, there are particular specificities with respect to permits required for the installation and operation of public charging stations within the EEA. Moreover, the Notifying Parties submit that there is also a clear tendency to harmonise the applicable legal framework in the EU with regard to the provision of charging infrastructure for electric vehicles in the EEA, such as the Commission's proposal for a regulation on the deployment of alternative fuels infrastructure (repealing Directive 2014/94/EU). There are also various operators (like Ionity or Fastned) that operate in several EU Member States.
- (102) The AGCM's observations with regard to the geographic scope of the relevant markets are consistent with recent and established Commission's decisional practice. Moreover, as explained in **Section 5.2 of this decision**, for (i) the (potential) market for the supply of hardware for the installation of charging points and for (ii) the manufacture and sale of electric vehicles the Commission, for the purpose of this decision, carried out its assessment at national level for the following reasons. First, the upstream or downstream market for the installation and operation of public ultra-fast charging stations for electric vehicles is national in scope. Second, the JV will be active only in Italy. Therefore, the potential effects would develop mainly if not exclusively at national level.
- (103) Therefore, as well as for the reasons mentioned in **Section 5.2. of this decision** it can be concluded that the Relevant Markets in Italy are distinct from other geographical areas.

7.1.2. Markets within Italy in which the Proposed Concentration threatens to significantly affect competition

- (104) The AGCM considers that, based on the information provided by the Notifying Parties, the Proposed Concentration is likely to significantly affect competition in the Italian market for the installation and operation of public electric vehicle ultra-fast charging stations where the Parties activities overlap. In this market, VW Group and Enel Group are the two largest operators with market shares of [50-60]% and [10-20]%, respectively. The AGCM further observes that no sufficient evidence has been adduced to support the Notifying Parties' claim that Tesla will open its Supercharger network to electric vehicles of all other manufactures (if so, the Parties' combined market share would significantly reduce). Therefore, although the AGCM acknowledges that the market concerned is fast-moving, it cannot be ruled out that in the upcoming years the Parties will maintain the same strong position as they would have after the Proposed Concentration. In addition, the AGCM notes that it cannot be excluded that the Proposed Concentration will lead to foreclosure effects on markets upstream and downstream⁷⁵ to the market for the installation and operation of public electric vehicle ultra-fast charging stations.

⁷⁴ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section I.

⁷⁵ These are the markets for the: (ii) retail supply of electricity to large customers connected to the high and medium voltage grid in Italy; (iii) supply of white-label services for public electric vehicles

- (105) According to the Notifying Parties, the Proposed Concentration does not give rise to competition concerns under any plausible market definition for, inter alia, the following reasons. First, the Proposed Concentration will not determine any combination of the activities of the Enel Group and VW Group in the Italian market for the installation and operation of public ultra-fast electric vehicle charging points.⁷⁶ Second, the absolute infancy stage of the market at issue would entail that none of the Parties would currently have any real position of strength⁷⁷. The Notifying Parties further submit that there are no vertical links between the installation and the operation of publicly available ultra-fast electric vehicles charging points and to (i) the upstream market for the supply of hardware for the installation of points of charge and the (ii) market for production and sale of electric vehicles as well as any foreclosure concerns in any of the upstream or downstream vertical links for the Notifying Parties' reasons set out in **Section 6 of this decision**.⁷⁸
- (106) The Commission notes that the *prima facie* competition concerns of the AGCM are, without prejudice to the AGCM's further investigation, consistent with the results of the Commission's targeted market investigation and preliminary assessment, as set out in **Section 6 of this decision**.
- (107) In reply to the Notifying Parties' observations outlined in **Sections 5 and 6 of this decision**, it is reiterated that the Proposed Concentration results in the horizontally affected market for the installation and operation of publicly available electric vehicle ultra-fast charging stations in Italy as well as in a number of vertically affected markets and potential markets⁷⁹ (See **Section 5 of this decision**).
- (108) On the claim that the Proposed Concentration will not lead to any horizontal combination of the Parties' activities in the market for the installation and operation of publicly available electric vehicle ultra-fast charging stations in Italy as, post-closing (presumably in [...]) Enel Group will [Strategic Market Plans],⁸⁰ the Commission refers to its preliminary assessment in **Section 6 of this decision**.
- (109) On the claim that, in any event, the combined market shares of the Parties in this market will go down in the near future,⁸¹ the Commission refers to its preliminary assessment in **Section 6 of this decision**.

charging stations in Italy; (iv) the supply of hardware for the installation of charging points in Italy; (v) provision of subscription services for public electric vehicle charging stations in Italy; (vi) and manufacture and sale of electric vehicles in Italy.

⁷⁶ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 1.

⁷⁷ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 2.

⁷⁸ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II. 2. 2.

⁷⁹ These are the markets for the: (ii) retail supply of electricity to large customers connected to the high and medium voltage grid in Italy; (iii) supply of white-label services for public electric vehicles charging stations in Italy; (iv) the supply of hardware for the installation of charging points in Italy; (v) provision of subscription services for public electric vehicle charging stations in Italy; (vi) and manufacture and sale of electric vehicles in Italy.

⁸⁰ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II.1.

⁸¹ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II.2.

- (110) On the claim that there would be no vertical links between the installation and the operation of publicly available ultra-fast electric vehicles charging points and to (i) the upstream market for the supply of hardware for the installation of points of charge and the (ii) market for production and sale of electric vehicles and that there would be no foreclosure concerns in any of the upstream or downstream vertical links,⁸² the Commission refers to its preliminary assessment in **Sections 5 and 6 of this decision**.
- (111) Overall, the Commission follows the AGCM's Referral request in preliminary concluding that the Proposed Concentration threatens to significantly affect competition in the Relevant Markets in Italy.

7.1.3. Conclusion

- (112) In light of the above, the Commission considers that the legal requirements laid down in Article 9(2)(a) of the Merger Regulation are fulfilled, as the Proposed Concentration threatens to significantly affect competition in the market for the installation and operation of publicly available electric vehicle ultra-fast charging stations in Italy (and cannot be excluded that foreclosure issues will rise in its upstream and downstream related vertical markets), which present all the characteristics of distinct markets. Because the requirements under Article 9(2)(a) of the Merger Regulation are met, a further assessment of the conditions of Article 9(2)(b) of the Merger Regulation is not required.

7.2. The Commission's discretion whether to refer

- (113) Pursuant to Article 9(3) of the Merger Regulation, in the event that the criteria provided for in Article 9(2)(a) are fulfilled with regard to a proposed concentration, the Commission retains a margin of discretion in deciding whether to refer a given case to a national competition authority.⁸³
- (114) The AGCM submits that it is the best placed authority to review the Proposed Concentration for a number of reasons. First, the Proposed Concentration only relates to markets whose geographic scope is limited to Italy (with the only exception of the supply of hardware, a possible sub-category of the market for the production, supply and installation of charging infrastructure). Second, the AGCM considers that the concentration is likely to affect competition significantly in the Italian market for the installation and operation of public ultra-fast EV charging stations where the Parties' activities overlap. Third, the AGCM has past specific experience in dealing with the relevant markets. Fourth, the principle of one-stop-shop is preserved.
- (115) The Notifying Parties consider that, although the AGCM "[...] is certainly perfectly well equipped to scrutinise [...]" the Proposed Concentration, the Commission is better placed to review it for the following reasons.⁸⁴ First, the Commission has reviewed many more concentrations in the e-mobility sector. Second, the development of e-mobility-related markets is taking place throughout the EU and such development is likely to have an impact on the achievement of the EU Green Deal.

⁸² The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request, Section II.2.

⁸³ Referral Notice, paragraph 7.

⁸⁴ The Notifying Parties' submission of 26 August 2021 in response to the AGCM's Referral Request.

- (116) In the following recitals, the Commission assesses the appropriateness of a referral in the present case in light of the principles set out in the Referral Notice.
- (117) According to paragraph 9 of the Referral Notice, “[i]n principle, jurisdiction should only be reattributed to another competition authority in circumstances where the latter is more appropriate for dealing with the merger, having regard to the specific characteristics of the case as well as the tools and expertise available to the authority.” The Referral Notice also states that “particular regard should be had to the likely locus of any impact on competition resulting from the merger” and that “[r]egard may also be had to the implications, in terms of administrative effort, of any contemplated referral.”
- (118) The Commission considers, in light of the specific characteristics of the case as well as of the expertise available to the AGCM, of the locus of potential significant impact on competition and of all other sort of implications, including administrative effort, that the AGCM is the most appropriate for dealing with the Proposed Concentration for the following reasons.
- (119) First, the Commission considers that most of the effects of the Proposed Concentration are likely to be confined to, or have their main economic impact in, Italy.
- (120) Second, the AGCM possesses specific expertise in assessing competition in the e-mobility sector in Italy. It has for instance examined these markets in case C.12224 – *Dolomiti Energia Holding-Alperia/Alperia Smart Mobility*. Moreover, the AGCM is in a better position than the Commission to assess the impact of the Italian PNRR on the markets at issue. The AGCM is therefore well equipped to assess the impact of the Proposed Concentration on competition in the markets in question.
- (121) Third, the requested referral will preserve the one-stop-shop principle, as the whole case will be referred to a single competition authority, which contributes to administrative efficiency.
- (122) Lastly, it appears unlikely that any additional administrative effort for the Parties due to a referral will be disproportionate. The AGCM has already formed a broad picture of the main characteristics of the case and potential competition concerns prior to the filing of its Referral Request. Given its knowledge of the markets, its previous experience in similar market investigations, its language capabilities and of the Italian PNRR scheme, the AGCM will be in a position to carry out the market investigation in an efficient and effective way.
- (123) Based on the above and on the guiding principles of the Commission Notice on case referral, it appears appropriate that the case is referred in full to Italy as regards the assessment of the effects of the Proposed Concentration on the relevant markets in Italy.

8. CONCLUSION

- (124) In light of the above, the Commission considers that (i) the legal requirements to request a referral under Article 9(2)(a) of the EU Merger Regulation are met and (ii) the AGCM is the most appropriate and best placed authority to carry out a thorough investigation of the effects of the Proposed Concentration in Italy.
- (125) The Commission thus decides to refer the Proposed Concentration in its entirety.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration is referred in its entirety to the competition authority of Italy pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

Article 2

This Decision is addressed to:

Italy

Enel X S.r.l.
Viale di Tor di Quinto 45/47
00191 Rome
Italy

Volkswagen AG
Berliner Ring 2
38440 Wolfsburg
Germany

Done at Brussels, 17.9.2021

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President