EUROPEAN COMMISSION
DG Competition

Case M.11128 - IBERDROLA / BP / JV

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 26/10/2023

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EUROPEAN COMMISSION

Brussels, 26.10.2023
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.11128 – IBERDROLA / BP / JV**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 21 September 2023, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Iberdrola, S.A. ('Iberdrola', Spain), through its subsidiaries – Iberdrola Clientes, S.A.U. ('Iberdrola Clientes') and Iberdrola Clientes Portugal, Unipessoal, Lda ('Iberdrola Clientes Portugal') – and BP p.l.c. ('BP', UK), through its subsidiaries – BP Energía España, S.A.U. ('BP Spain') and BP Portugal, Comércio de Combustíveis e Lubrificantes, S.A. ('BP Portugal') – (Iberdrola and BP hereinafter together the 'Notifying Parties') intends to acquire indirectly joint

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

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

control over a newly created Joint Venture (the 'JV', and, together with Iberdrola and BP, the 'Parties') by way of purchase of shares (the 'Transaction').[3]

1. THE PARTIES

(2) Iberdrola is a global integrated energy company, headquartered in Bilbao (Spain) and listed in the Madrid, Barcelona, Bilbao and Valencia stock exchanges. Iberdrola is mainly active in the energy sector throughout its entire value chain (generation, transmission, distribution and supply of electricity). Iberdrola is also active in the generation of green hydrogen, as well as the retail supply of gas and other energy products. In Spain and (to a much lesser extent) Portugal, Iberdrola is also active in the installation, operation and maintenance of public charging stations for electric vehicles ('EVs'), as well as the provision of charging services for EVs ('e-mobility services') through its e-mobility solution 'Recarga Pública Iberdrola'.

(3) BP is a publicly traded company based in London (UK) and listed in the London, New York, Frankfurt, Hamburg, and Dusseldorf stock exchanges. BP is an integrated energy company with operations in Europe, North and South America, Australasia, Asia and Africa, focused around four business groups: (i) production and operations of hydrocarbons (oil and gas); (ii) customers and products – which is growing BP's convenience and mobility offers for customers; (iii) gas and low carbon energy (including renewables and integrated gas); and (iv) innovation and engineering for driving digital transformation. In Spain and Portugal, BP is active in the operation and management of fuel stations, and to a limited extent in the installation, operation and maintenance of public EV charging stations.

(4) The JV will consist of a newly incorporated limited liability company active in the installation, operation and maintenance of a public network of fast and ultra-fast EV charging stations in Spain and Portugal.

2. THE OPERATION

(5) On 1 March 2023, Iberdrola and BP entered into a Framework and Business Combination Agreement[4] pursuant to which the JV will be jointly controlled by Iberdrola and BP, who will each hold 50% of the shares.

(6) The JV will consist of a newly incorporated limited liability company headquartered in Madrid (Spain), in which Iberdrola and BP will combine their respective assets and expertise relative to fast and ultra-fast[5] EV charging, by contributing their existing and pipeline fast and ultra-fast EV charging stations (except for certain 'retained' charging stations) and land sites suitable for the installation and operation of EV charging stations (about [500-600] of BP's fuel stations in Spain and Portugal[6]).

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3 Publication in the Official Journal of the European Union No C 344, 29.9.2023, p. 227.

4 Form CO, Annex 1 - Framework and Business Combination Agreement.

5 Charging speeds are measured in kilowatts ('kW'). They are typically categorised by power output, into (i) regular, (ii) fast, and (iii) ultra-fast charging, although the exact delineation between what constitutes regular, fast and ultra-fast is not agreed by all in the sector.

6 [500-600] fuel stations represents about [70-80]% of all BP-owned and [40-50]% of all BP-branded fuel stations in Spain and Portugal.

2.1. Joint control

(7) Pursuant to the Framework and Business Combination Agreement, the JV will be 50:50 owned and indirectly jointly controlled by Iberdrola and BP.

(8) According to the agreed terms of the Shareholders Agreement ('SHA')[7] to be entered into by BP Spain and Iberdrola Clientes, the Notifying Parties will need to agree on, *inter alia*, [details on the JV's governance].

(9) Decisions in the JV will be made [details on the JV's governance].

(10) The Board of Directors will consist of […] directors, out of which each of the Notifying Parties will have the right to appoint […] directors.[8] Decisions at the Board of Directors will require the positive vote from […]. Each of the Notifying Parties will therefore have the right to veto the adoption of decisions at the Board of Directors.[9]

(11) Decisions at the General Shareholder Meeting will require [details on the JV's governance].[10]

(12) The business plan will be initially agreed by [details on the JV's governance]. Upon completion and thereafter, the business plan will be [details on the JV's governance]. [11]

(13) None of the Notifying Parties will [details on the JV's governance].

(14) As a result of the Transaction, the Notifying Parties will jointly control the JV within the meaning of Article 3(1)(b) of the Merger Regulation.

2.2. A full-function JV

(15) The JV, which will be active in the installation, operation and maintenance of a public network of fast and ultra-fast EV charging stations in Spain and Portugal, will be a full-function joint venture.

(a) The JV will have sufficient resources to operate independently in the market. Specifically, the JV will have the necessary qualified personnel to carry out its activities, the necessary assets, management team and financial resources for the development of its business.[12]

(b) The JV's activities will go beyond one specific function for the parents. The JV will have its own presence in the market, operating autonomously and conducting its activities and commercial policy on the market under its own marketing and under a co-branding agreement with the Notifying Parties.[13] As stated in Section 2.3 of the SHA, the JV will sell EV charging services

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7 Form CO, Annex 2 - Shareholders Agreement.

8 Section 5.2 of the SHA

9 Section 5.4.A of the SHA

10 Schedule 1 to the SHA

11 Clause 3.1 of the SHA,

12 Form CO, paragraphs 61 – 72.

13 The Parties will provide the Joint Venture with a co-branding solution to be used as the Joint Venture's brand at its public EV charging stations and communication materials. The Joint Venture's current plan is to use a balanced stacked version of the Parties' logos, accompanied by a separator line and a relationship statement; Form CO, paragraph 93.

through its own public network of fast and ultra-fast EV charging stations to e-mobility service providers ('eMSPs') – including both Notifying Parties and third parties. In addition, the JV will independently develop, operate and maintain the public network of EV charging stations through its own network development strategy.[14]

(c) In relation to the JV's sale/purchase relations with the Parties, the JV's main source of income will be its own business activity in the market, i.e. the sale of charging services through its network of public EV fast and ultra-fast charging stations to eMSPs. The Notifying Parties expect that at least 40% of the JV's income during its lifespan will proceed from services provided to third parties. All sales to the Notifying Parties will be made on an arm's length basis.[15]

(d) The JV is intended to operate on a lasting basis.[16]

(16) Therefore, post-Transaction, the JV will be a full-function joint venture within the meaning of Article 3(4) of the Merger Regulation.

3. UNION DIMENSION

(17) Iberdrola and BP have a combined aggregate global turnover of over EUR 5 billion (Iberdrola: EUR 53.9 billion; BP: EUR 241.9 billion).[17] Each of them has an EU-wide turnover in excess of EUR 250 million in the last respective full financial year (Iberdrola: EUR [Iberdrola EU-wide turnover]; BP: EUR [BP EU-wide turnover]). Although Iberdrola realised more than two-thirds of its turnover in [EU country], BP did not. The Transaction therefore has an Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

4.1.1. Industry overview

(18) The JV's main activities will focus on the installation, operation and maintenance of a public network of fast and ultra-fast EV charging stations[18] for battery electric

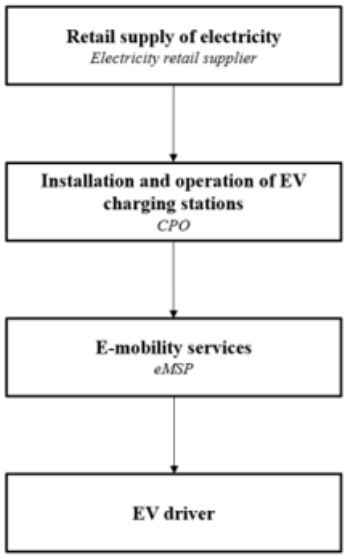
14 Form CO, paragraphs 73 – 76.
15 Form CO, paragraphs 78 – 97.
16 Form CO, paragraphs 99 – 100.
17 Turnover calculated in accordance with Article 5 of the Merger Regulation.
18 EV charging station infrastructure comprises typically: (i) a 'charging pool' (or charging hub), which consists of one or multiple charging stations and the related parking lots; (ii) 'charging stations', which are physical posts with one or more charging points that share a common user identification interface (such as badge/RFID reader, buttons, display); and (iii) 'charging points', i.e., the interface equipment that connects the EV to the electricity supply, whereby a charging point may have one or several connectors to accommodate different connector types, but only one can be used at a time (Form CO, paragraphs 132 et seq.) Unless specified, this Decision refers to 'charging stations' to designate the physical object being installed or operated and to 'charging points' to designate the number of electricity outlets as the units, e.g., for market share calculation.

passenger cars ('PCs') and battery light commercial vehicles ('LCVs')[19] in Spain and Portugal, i.e., it will be a charging point operator ('CPO').[20]

(19) CPOs can either own and operate a set of EV charging stations, or simply operate them for third parties (or both). CPOs typically enter into agreements with municipalities, public bodies and business customers to obtain access to specific locations for the installation of public EV charging stations. Once a location has been identified, CPOs are responsible for obtaining all necessary permits and contracting the different services required for the efficient functioning of the EV charging stations they operate, such as e-mobility services, supply of electricity[21], lease/acquisition of land, IT infrastructure to be installed, and maintenance services, amongst others.

(20) The figure below depicts the structure of the e-mobility value chain that is applicable to the vast majority of EU Member States, including Spain:

Figure 1: Simplified overview of the e-mobility value chain in Spain



Source: Form CO, paragraph 139.

(21) Public EV charging stations are considered to be of a purely public nature when they are freely accessible by all customers at any point of the day. Public EV charging can also be of a semi-public nature when they are erected on a private domain that is subject to specific, non-discriminatory access restrictions, such as opening and closing hours.[22] Furthermore, public EV charging stations are

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19 EV chargers for PCs and LCVs are different from those for trucks and coaches (M.10534 – TRATON / AKTIEBOLAGET VOLVO / DAIMLER TRUCK / JV). In this Decision, references to to EV charging stations only refer to those for PCs and LCVs.

20 Form CO, paragraph 14.

21 Form CO, paragraph 18. While in most Member States the CPO contracts the electricity provider directly (including in Spain), in Portugal, due to regulatory reasons, it is the eMSP (referred to as 'CEME' for *Comercializadores de Eletricidade para a Mobilidade Elétrica* in Portuguese) instead of the CPO who contracts with and sources the electricity from the electricity supplier for public EV charging stations. The CEME is responsible for the procurement of electricity for the charging services and thus allows end-users of the public EV charging stations to obtain the electricity needed to recharge their EVs.

22 Examples of public and semi-public locations are urban and interurban fuel stations, supermarkets, shopping centres, restaurants, cinemas, and other public car parks. On the contrary, private EV

typically categorised on the basis of their charging speed[23] between (i) regular, (ii) fast, and (iii) ultra-fast charging stations.[24]

(22) E-mobility services are technology services that facilitate the effective functioning of EV charging stations and consumers' access to them. CPOs enter into contracts with eMSPs to grant them access to the CPO's EV charging station network. eMSPs enable EV drivers to use EV charging stations, generally through a digital application that allows EV drivers to search for and book a charging station, connect their EV to the charging station, pay for the charging service (also via physical payment cards issued by the eMSP), and other potential functionalities depending on the level of sophistication of the application. In any case, EV drivers never contract with electricity retail suppliers for the purposes of charging their EVs.[25]

(23) Retail supply of electricity is an input required for the operation of public EV charging stations, representing approximately 70% of public EV charging stations' operational costs. As such, the retail supply of electricity constitutes a service that is upstream to the installation, operation and maintenance of public EV charging stations.[26]

(24) The market for the installation, operation and maintenance of public EV charging stations and the e-mobility industry have been subject to substantial recent developments, mainly as a result of the increasing environmental concerns and fuel prices, as well as the need to make greener transport options a credible alternative to the traditional carbon dioxide-emitting ones. Public environmental initiatives at EU and national level have in recent years focused on fostering these developments and accelerating the deployment of public EV charging infrastructure towards a greener future by granting public financing or setting certain sustainability objectives.[27]

(25) In relation to the status of the development of the EV charging sector in Spain and Portugal:

(a) For Spain, the Notifying Parties submit that the number of public EV charging points currently falls well below the targets set in both the Spanish

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charging stations are not publicly accessible. Private EV charging stations can be dedicated to an individual apartment, office, or fleet. The private owner of the EV charging station can choose to operate it by itself or appoint a CPO.

23 EV charging stations are actually categorised in terms of power output, measured in kilo Watt ('kW'), rather than in speed (i.e., time of charging). However, for ease of reference and consistent with common use, the Commission will refer to 'charging speed' for the purpose of this Decision.

24 Form CO, paragraphs 134, 135 and 569.

25 Form CO, paragraphs 140, 141, 142 and 147.

26 Form CO, paragraph 144.

27 Form CO, paragraphs 228, 229 and 503. See (i) the Commission's '*Competition analysis of the electric vehicle recharging market across the EU27 + the UK*' (the '2023 EV Charging Report'), (ii) Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure, (iii) the Commission's Fit for 55 package proposal, (iv) the Commission's Net Zero Industry Act, (v) the Commission's 9 March 2023 amendment of Regulation (EU) No 651/2014 declaring certain categories of ais compatible with the internal market in application of Articles 107 and 108 TFEU, (vi) the EU's Connecting Europe Facility (transport) programme, and (vii) the Commission's Important Project of Common European Interest to support research and innovation in the battery value chain.

integrated National Energy and Climate Plan for 2021-2030 and the Commission's Fit for 55 package.[28]

(b) For Portugal, the 2023 EV Charging Report stated that the sector is '*rapidly developing*', and that it has one of the highest EV sales penetration rates (with new sales in 2022 making up 22.4% of overall car sales). However, the growth of the recharging infrastructure (so that there were 5,600 EV charging points in 2022) has not kept pace with the high level of EV sales and therefore Portugal is placed among the lowest rank within the EU in terms of EVs per recharge point.[29]

4.1.2. The Parties' activities

(26) Iberdrola is already active in the installation, operation and maintenance of public fast and ultra-fast EV charging stations in Spain and to a much lesser extent in Portugal. It is also active in the provision of e-mobility services and the retail supply of electricity.[30]

(27) In Spain and Portugal, BP owns and operates land and sites suitable for the installation of public EV charging stations through the operation and management of fuel stations.[31] In relation to the installation, operation and maintenance of public EV charging stations, BP is not active in Portugal but it is active, to a limited extent, in Spain where, as of 1 June 2023, it owns and operates a public EV charging network of 28 public EV charging points.

(28) Table 1 below shows the activities in the value chain related to the installation, operation and maintenance of public EV charging stations in which Iberdrola and BP are active, including also where the future JV will be active, in Spain and Portugal:

Table 1: Overview of the Parties' activities in Spain and Portugal

Market	Iberdrola		BP		Joint Venture	
	Spain	Portugal	Spain	Portugal	Spain	Portugal
Retail supply of electricity	Active	Active	-	-	-	-
Land / sites suitable for installation and operation of EV charging stations	-	-	Active	Active	-	-
Installation, operation and maintenance of public EV charging stations	Active	Active	Active	-	Active	Active
E-mobility services	Active	Active	-	-	-	-

Source: Form CO, paragraph 138.

(29) The Transaction therefore concerns the following activities:

(a) Installation, operation and maintenance of public EV charging stations;

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28 The objective for Spain was to have 45,000 public EV charging points installed and operational by the end of 2022, increasing to 110,000 by 2025 and 340,000 by 2030. As of 1 June 2023, there were 30,740 public EV charging points in Spain (Form CO, paragraph 229).

29 2023 EV Charging Report, page 275.

30 Form CO, paragraphs 136 and 137.

31 Form CO, paragraphs 136 and 137.

(b) Provision of e-mobility services;

(c) Retail supply of electricity;

(d) Ownership and operation of land and sites suitable for the installation, operation and maintenance by third parties of public EV charging stations.

4.2. Market for the installation, operation and maintenance of public EV charging stations

4.2.1. Product market definition

4.2.1.1. The Commission's previous practice

(30) In its past decisional practice, the Commission considered the market for the installation, operation and maintenance of public EV charging stations as a separate market from the market for the installation, operation and maintenance of private EV charging stations. The Commission did not distinguish between public and semi-public EV charging stations.[32]

(31) In both M.8870 – *E.ON/Innogy* and M.10311 – *Enel X/VWFL/JV*, the Commission considered potential segmentations of the market for the installation, operation and maintenance of public EV charging stations based on (a) the charging speed and (b) on the type of location (i.e., on-motorway and off-motorway EV charging stations).[33]

(a) As regards the potential segmentation based on charging speed, the Commission initially distinguished regular and fast EV charging stations, with charging speeds below 22 kW and from 22kW to 100 kW respectively, from ultra-fast EV charging stations, with a charging capacity above 150 kW. The Commission left open whether regular and fast charging stations belong to the same relevant market or are two separate markets.[34] In a more recent referral case, the Commission accepted the Notifying Parties' proposed segmentation of the market between regular charging stations, with a charging speeds below 22 kW, fast charging stations, with a charging speeds from 22 kW to 100 kW, and ultra-fast charging stations, with a charging speeds above 100 kW.[35]

(b) As regards the potential segmentation based on location (i.e., on-motorway and off-motorway EV charging stations), the Commission previously concluded that on-motorway and off-motorway EV charging stations constitute two separate product markets.[36] However, in a more recent referral case, the Commission did not distinguish between on-motorway from off-motorway EV charging stations.[37] In another recent case the Commission left this question open.[38]

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32 M.8870 – *E.ON / Innogy*, paragraph 181 and 209.

33 M.8870 – *E.ON / Innogy*, paragraphs 182 and 190; M.10311 – *Enel X / VWFL / JV*, paragraphs 19 and 20.

34 M.8870 – *E.ON / Innogy*, paragraphs. 182 and 190.

35 M.10311 – *Enel X / VWFL / JV*, paragraphs 19 and 20.

36 M.8870 – *E.ON / Innogy*, paragraph 190.

37 M.10311 – *Enel X / VWFL / JV*, paragraphs 19 and 20.

38 M.10212 – *Andel / Energi Danmark*, paragraph 44.

(32) In addition to Commission decisions in merger cases, the Commission's 2023 EV Charging Report offers instructive and up-to-date information on the sector.

(33) The 2023 EV Charging Report assessed public EV charging points only. Private EV charging points were out of scope of that study as its focus was on what is needed for an acceleration in EV adoption in the EU and it stated that a '*sufficiently dense, widespread, and publicly accessible recharging infrastructure network is a key enabler for EV uptake*'. Given that one of the main goals of the study was '*to provide a description of the competitive conditions [in] the sector*', the fact that it was decided that private EV charging stations were out of its scope aligns with the approach taken in the Commission's previous cases that there is a segmentation between public and private EV charging stations.

(34) The 2023 EV Charging Report distinguished between fast and ultra-fast differently from the Commission's recent decisional practice. In that report, fast is considered to be from 22 kW to 150 kW and ultra-fast to be 150 kW and above (see recital (38) below).

(35) The 2023 EV Charging Report points to the higher costs generally associated with on-motorway charging stations. In relation to what it terms 'on-route recharging', which is '*EV recharging conducted during a longer trip, often along major roads, highways, or other strategic locations*', it states that while '*a 50-kW recharger [costs] approximately €30k … many on-route recharging options are now in the range of 150 kW or more (costing upwards of €50k), increasing indirect costs needed to reinforce the local distribution network and to set up the site … The additional grid capacity needed is particularly impactful …, not only due to the increased upfront capital cost required, but also due to the lengthy, complicated, and expensive processes around getting DSOs* [Distribution System Operators] *to make the necessary upgrades*'.[39]

(36) The 2023 EV Charging Report discussed different use cases for EV charging, including:

(a) on-street charging, i.e., charging on public streets, typically done at a slow charging speed and for a long duration; and

(b) destination charging, i.e., charging at locations such as supermarkets, hotels, gyms, car parks, and workplaces, offered as an additional service to customers/staff, and typically fast charging speeding and for a medium duration.

4.2.1.2. The Notifying Parties' views

(37) The Notifying Parties do not challenge the Commission's past decisional practice to distinguish between markets for the installation, operation, and maintenance of public and semi-public EV charging stations and of private EV charging stations.[40]

(38) In relation to the potential segmentation based on charging speeds, the Notifying Parties submit that the Commission's most recent decisional practice to consider fast EV charging stations to be from 22 kW to 100 kW and ultra-fast EV charging stations to be above 100 kW accurately reflects the current reality of the EV

39 2023 EV Charging Report, p. 47.

40 Form CO, paragraph 152.

charging industry. The Notifying Parties submit that the categorisations in the 2023 EV Charging Report (where fast is up to 150 kW and ultra-fast is 150 kW and over) were not made in the context of a market definition exercise, and that in Spain and Portugal public EV charging stations with charging speeds of between 100-150 kW show similar characteristics to those with charging speeds equal to higher than 150 kW:[41]

(a) From a demand-side perspective, the time required for a customer to fully charge an EV at a public EV charging station with a charging speed of 100 kW (approximately 25-30 minutes on average) is virtually equivalent to the time that it takes to charge an EV at a public EV charging station with a charging speed of 150 kW (approximately 20-25 minutes on average). Public EV charging stations with charging speeds below 100 kW typically require more time, oftentimes beyond an hour, to fully charge an EV and are therefore more suited to different charge opportunities.

Furthermore, prices charged by eMSPs to EV drivers at public EV charging stations are not significantly different between charging speeds of 100 kW and 150 kW. For example, Iberdrola's prices in Spain do not vary between public EV charging stations with charging speeds of 100 kW and those with charging speeds of 150 kW, while its prices in Spain at public EV charging stations with charging speeds of up to 50 kW are lower.[42]

(b) From a supply-side perspective, the investment required to install and operate public EV charging stations with charging speeds of 100 kW or 150 kW is substantially the same, ranging between EUR 65,000-70,000 (in the case of 100 kW public EV chargers) and EUR 75,000-80,000 (in the case of 150 kW public EV chargers). Investments required to install and operate public EV charging stations with charging speeds of 50 kW are materially lower, at approximately EUR 30,000.

Furthermore, the type of grid connection and voltage required for both 100 kW and 150 kW public EV charging stations to effectively function is the same (i.e., direct current ('DC') connection and high voltage), and as such these types of public EV charging stations do not present materially different technical requirements. Public EV charging stations with charging speeds below 100 kW present different technical features in terms of grid connection and voltage (i.e., alternating current ('AC') or DC connection and medium or low voltage depending on the case).

(39) Accordingly, the Notifying Parties submit that it is appropriate to segment the market for the installation, operation, and maintenance of public EV charging stations into regular charging stations, with a charging speed below 22 kW, fast charging stations, with a charging speed from 22 kW to 100 kW, and ultra-fast charging, with a charging speed above 100 kW.[43]

(40) In relation to the plausible segmentation based on location (i.e., on-motorway and off-motorway EV charging stations), the Notifying Parties submit that on-

41 Form CO, paragraph 154.

42 Form CO, paragraph 604. In the case of fast public EV charging stations, and due to technical reasons and market standard practices, the number of fast public EV charging stations with charging speeds between 50-100 kW is residual; current fast public EV charging stations generally have charging speeds between 23-50 kW (which fall outside the scope of the JV).

43 Form CO, paragraphs 153 – 155.

motorway and off-motorway EV charging stations are part of the same product market because:

(a) EV charging stations are still scarce and consumer choice is driven primarily by proximity to an EV charging station;

(b) it takes a non-negligible amount of time to charge an EV fully and therefore consumers consider on-motorway and off-motorway EV charging stations as interchangeable.[44]

(41) In relation to a plausible segmentation between on-street charging (which the Notifying Parties also refer to as 'on-the-go' charging), and destination charging, as discussed in the 2023 EV Charging Report, the Notifying Parties submit that such a segmentation is not warranted because:

(a) from a demand-side perspective, EV charging stations are still scarce and consumer choice is driven primarily by proximity to an EV charging station;

(b) from a supply-side perspective, there are no material differences in the installation, operation and maintenance of on-street and destination EV charging stations.[45]

(42) In any case, the Notifying Parties submit that that the product market definition can be left open as the Transaction does not give rise to any competition concerns irrespective of the plausible segmentation considered.[46]

4.2.1.3. The Commission's assessment

(43) In relation to defining the product market for the installation, operation and maintenance of EV charging stations, the majority of respondents to the market investigation[47] stated that their responses, outlined in this section, are applicable to both Spain and Portugal.[48] [49]

Segmentation between public and private EV charging stations

(44) In line with the Commission's precedents, the MI confirms that there are separate markets for the installation, operation and maintenance of public EV charging stations and of private EV charging stations, with the majority of respondents to the

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44 Form CO, paragraph 157 and 158.

45 Form CO, paragraphs 160-162.

46 Form CO, paragraph 166.

47 The market investigation included sending an electronic Request for Information ('eRFI') to a range of participants across the sector in Spain and Portugal.

48 Responses to question C.A.A.18 of the eRFI.

49 In relation to motorways in Spain and Portugal, some respondents (see responses to question C.A.A.18 of the eRFI) pointed to some general differences between the two countries. For example, a respondent stated that '*a difference that distinguish the Spanish and Portuguese market would be the way the highways are managed (by the government and/or concessionaires). In Portugal, most of the highways are concessioned, with well-established service areas directly accessible from the highway. In Spain, only roughly 25% of the highways have service areas on the highway infrastructure (Áreas de Servicio), similar as the Portuguese highway service stations. The other 75% of Spanish highways (% measured in km as of total highway km) have private established service stations, restaurants, cafeteria, all located close to highway exits'*. See Catalog and evolution of the road network of the Spanish Ministry of Transport, Mobility and Urban Agenda: https://www.mitma.gob.es/carreteras/catalogo-y-evolucion-de-la-red-de-carreteras and the Portuguese motorway network from Infraestructuras de Portugal: https://www.infraestruturasdeportugal.pt/pt-pt/rede-rodoviaria-ip.

market investigation stating that public EV charging stations are not interchangeable with private EV charging stations.[50] For example, one respondent stated that '[p]*rivate chargers are usually slower chargers (due to the fact charging time is usually not a concern at home overnight or in another destination charging setting) and more affordable (direct energy supply to the end-user + moderate cost of slow home chargers). However, not everyone can have access to private chargers*'. Another respondent stated that '*the role of CPO for private home recharging is not comparable to that for public charging stations (different price terms, different payment methods, different responsibilities in terms of risks of unavailability)*'. Some of the respondents who stated that public and private charging stations are not interchangeable further stated that they are complementary.[51] The market investigation did not provide any evidence that public and semi-public EV charging stations should be considered separately, and in this Decision they will be considered together as 'public' EV charging stations.

(45) Based on the above, the Commission considers that, for the purposes of this Decision, the product market for the installation, operation and maintenance of EV charging stations should be segmented between public and private EV charging stations.

Segmentation by charging speed

(46) In relation to the charging speed of public EV charging stations:

(a) The majority of respondents to the market investigation stated that there is a significant difference between public EV charging stations depending on the charging speed.[52]

(b) Respondents were divided as to the delineation of regular, fast, and ultra-fast. Around half said that regular is less than 22 kW, fast is between 22 and 150 kW, and ultra-fast is greater than 150 kW, and around half said that regular is less than 22 kW, fast is between 22 and 100 kW, and ultra-fast is greater than 100 kW.[53]

(47) Based on the above, the Commission considers that, for the purposes of this Decision, the product market for the installation, operation and maintenance of public EV charging stations should be segmented by charging speeds between regular, fast and ultra-fast, and that the exact delineation of what constitutes regular, fast and ultra-fast charging speeds can be left open because the Transaction does not raise serious doubts as to its compatibility with the internal market under either of the two plausible delineations of charging speed (i.e., either <22 kW / 22-100 kW / >100 kW or <22 kW / 22-150 kW / >150 kW).

Segmentation between on- and off-motorway

(48) In relation to public EV charging stations on- and off-motorways:

(a) A slight majority of respondents to the market investigation stated that an EV driver driving off-motorway would be likely to consider driving onto a

50 Responses to question C.A.A.1 of the eRFI.
51 Responses to question C.A.A.1 of the eRFI.
52 Responses to question C.A.A.2-1 of the eRFI.
53 Responses to question C.A.A.2-2 of the eRFI.

motorway to use an on-motorway EV charging station.[54] For example, a future competitor of the JV stated '[i]*t seems to us that the behaviour of a combustion engine driver and an electric vehicle driver are different. Unlike a tank of fuel, which is filled up in a very short time (around 4 minutes), the 'fast' recharging of an electric vehicle takes between 30 and 45 minutes. That's why it's acceptable for an electric vehicle user to go on the motorway freeway to recharge*'.[55] While this may be the case in Spain, where only about 12% of all multi-lane motorways are tolled,[56] the Commission considers that such EV driver behaviour may differ in Portugal, where the majority of motorways are tolled (i.e., 83% of the national network).[57]

(b) The majority of respondents to the market investigation stated that an EV driver driving on-motorway would be likely to consider leaving the motorway to use an off-motorway EV charging station,[58] but that they expect EV drivers to become less likely to do it when the availability of EV chargers becomes more widespread.[59]

(c) A slight majority of respondents to the market investigation stated that for eMSPs public EV charging stations on- and off-motorway are not interchangeable.[60] For example, one respondent stated that '*for the success of an eMSP it is crucial that he is offering a charging network that is as comprehensive as possible. Therefore all eMSPs try to offer their customers an as broad as possible network of charging points - both on-motorway and off-motorway*'. Similarly, another respondent stated that for eMSPs '*the most important thing is to make available to users as many charging points as possible, of all powers and with high availability rates, both located in urban and interurban areas*'.[61] The Commission considers that the market investigation responses indicate that eMSPs cannot substitute on-motorway EV charging stations with off-motorway EV charging stations, and *vice versa,* because they need to have both in their network.

(d) The majority of respondents to the market investigation stated that for CPOs public EV charging stations on- and off-motorway are not interchangeable.[62] For example, one respondent stated that '[t]*here is usually higher complexity in projects on-motorway due to necessary permits, and more difficulties in grid access*'. Another respondent stated that '*motorway locations ... have more restricted access (long term private lease), and likely higher costs to access for a CPO as well as maybe extra requirements in term of number of available charge points* [so a] *large investment* [is] *required*'.[63]

(49) Based on the above, the Commission considers that, for the purposes of this Decision, it can be left open whether the product market for the installation, operation and maintenance of public EV charging stations should be segmented

54 Responses to question C.A.A.3 of the eRFI.
55 Responses to questions C.A.A.4 of the eRFI.
56 See Tolls dependent on the General Administration of the State from the Spanish Ministry of Transport, Mobility and Urban Agenda: https://www.mitma.gob.es/carreteras/peajes-dependientes-de-la-age.
57 See Infraestruturas de Portugal: https://www.infraestruturasdeportugal.pt/pt-pt/subconcessoes.
58 Responses to question C.A.A.5 and C.B.A.4 of the eRFI.
59 Responses to question C.B.A.5.
60 Responses to questions C.A.A.7 of the eRFI.
61 Responses to questions C.A.A.8 of the eRFI.
62 Responses to question C.A.A.9 of the eRFI.
63 Responses to question C.A.A.10 of the eRFI.

between on- and off-motorway charging stations, because the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition. The assessment will focus on the narrowest plausible markets, i.e. separate markets for on- and off-motorway public EV charging stations.

Other segmentations

(50) In relation to possibly segmenting the market between on-street (or on-the-go) charging and destination charging, the market investigation did not suggest that any other segmentation is necessary for the purposes of this Decision in addition to the other product market segmentations discussed (i.e., segmentations between public and private EV charging stations, between on- and off-motorway EV charging stations and by charging speed).[64]

(51) In summary, based on the above, the Commission considers that, for the purposes of this Decision, the product market for the installation, operation and maintenance of EV charging stations should be segmented (i) between public and private EV charging stations, and (ii) by charging speeds between regular, fast and ultra-fast. The Commission leaves open (i) whether there are separate markets for on- and off-motorway public EV charging stations, and (ii) the exact delineation of what constitutes regular, fast and ultra-fast charging speeds, because the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.2.2. Geographic market definition

4.2.2.1. The Commission's previous practice

(52) The Commission previously assessed that the market for the installation, operation and maintenance of public EV charging stations presents elements of national competition, but ultimately left the exact geographical scope open.[65] More recently, the Commission analysed the market from a national perspective.[66]

(53) In M.8870 – *E.ON/Innogy* the Commission considered that competition between public EV charging stations on-motorways has a strong local element and concluded that a distance of 50 kilometres ('km') is a good proxy to identify stations which are likely to place a material competitive constraint on each other. The Commission based its conclusions on (i) the market investigation, (ii) case M.1628 – *TotalFina/ELF* where the Commission assessed the merger on motorway sections of 40 km, and (iii) the planning principles for investments laid down by the Federal Ministry of Transport and Digital Infrastructure in Germany, where both E.ON and Innogy operated, according to which stations on motorways should be built at a distance of 50-60 km, up to 80 km in less congested areas.[67]

(54) The 2023 EV Charging Report discussed the 'local component' of the EV charging sector. While it stated that its '*research has not revealed precise information on the extent to which consumers are willing to trade off price and convenience (e.g., by*

64 Responses to questions C.A.A.11 – 15 of the eRFI.
65 M.8870 – *E.ON / Innogy*, paragraphs 197-200.
66 M.10311 – Enel X / VWFL / JV, paragraph 40.
67 M.8870 – *E.ON / Innogy*, paragraph 197.

travelling to and using a recharging point that is lower-priced but somewhat further from their home or place of work)', it stated that '*there will be a limit on how far consumers are willing to travel further away to avoid a small but significant increase in prices of local suppliers, hence introducing a geographic component to competition*'. Furthermore, it stated that '[w]*hile one would expect markets to be less narrow than in ICE* [internal combustion engine] *equivalents (e.g., because filling up an ICE vehicle is a faster process than recharging an EV and because the prospect for many EV users of recharging at home or at different destinations creates a new dynamic), there is still potential for relatively narrow geographic markets from a consumers' perspective*'.[68]

4.2.2.2. The Notifying Parties' views

(55) The Notifying Parties agree with the conclusions of the Commission to consider the market for the installation, operation and maintenance of public EV charging stations as national in scope. The Notifying Parties submit that the market is characterised by elements of national competition (i.e., competition between CPOs takes place at national level and prices are set uniformly across the country),[69] but also that '*drivers' usage of public EV charging stations presents elements of local competition*', in line with the Commission's decisional practice and the 2023 EV Charging Report.[70]

(56) In any case, the Notifying Parties submit that the exact market definition can ultimately be left open as the Transaction does not give rise to competition concerns under any plausible market segmentation.[71]

4.2.2.3. The Commission's assessment

(57) A large majority of the CPOs who responded to the market investigation are active at a national level in Spain and/or Portugal. Of those, the majority set their prices uniformly at the national level, though some set prices at a regional or local level.[72] This confirms that the market has elements of national competition.

(58) In addition, in line with its previous practice, the Commission also considers that there are elements of local competition in the markets for the installation, operation and maintenance of public EV charging stations in Spain and Portugal.[73]

(59) The Commission assessed in the present case a range of metrics in relation to local elements of competition and the delineation of local catchment areas of EV charging stations. In relation to this assessment overall, the large majority of respondents who are active in both Spain and Portugal stated that there are no significant relevant differences between the two counties. For example, one respondent stated that they '*do not see significant differences on this topic between Portugal and Spain*'.[74]

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68 2023 EV Charging Report, pp. 63 – 64.
69 Form CO, paragraph 169.
70 Form CO, paragraph 169.
71 Form CO, paragraph 169.
72 Responses to question C.B.A.1 of the eRFI.
73 M.8870 – *E.ON / Innogy*, paragraph 197.
74 Responses to question C.B.A.11 of the eRFI.

(60) The market investigation produced mixed results in relation the distance that market participants consider EV drivers are willing to drive to find a suitable, alternative charging point.

(a) When asked to consider the market as a whole, i.e. without segmentation by location or charging speed, the results were inconclusive.[75]

(b) When asked to consider only EV drivers driving on motorways, the majority of respondents said that EV drivers would be willing to drive a maximum of 20 or 30 km. However, a significant minority said a maximum of 50 kilometres or 'more than 50 km if necessary'.[76]

(c) When asked to consider only EV drivers driving off motorways, the majority of respondents said that EV drivers would be willing to drive a maximum of 5 km, with more than half of those respondents stating that it would be a maximum of 2.5 km. However, a significant minority said a maximum of 10 or 20 km.[77]

(d) When asked to consider the on- and off-motorway scenarios with the further segmentation of charging speeds (e.g., how far EV drivers are willing to drive for ultra-fast chargers), the range of results was broadly similar to the results presented directly above, i.e., a slight majority of respondents stated a willingness of EV drivers to drive 20-30 km on-motorway for each of the different charging speeds, although a significant minority (especially when asked about the ultra-fast charging speed category) considers EV drivers willing to drive up to, or more than, 50 km on-motorway, and a slight majority of respondents stated that EV drivers would be willing to drive at maximum 2.5-5 km off-motorway for regular or fast and 5-10 km for ultra-fast public EV chargers, whereas a significant minority of respondents indicated EV drivers would be willing to drive up to or more than 20 km to reach an ultra-fast charger. For example, a respondent stated (with reference to driving a maximum of 30 km on motorways) that '*the driver will prefer to drive more to an ultra-fast charging point […] because it saves time*'.[78]

(61) In relation to EV drivers driving on motorways leaving the motorway for the purpose of charging their EV:

(a) in terms of travel time, the majority of respondents who gave a view stated that EV drivers are willing to drive for 5 minutes or less when leaving the motorway for the purpose of charging their EV;[79]

(b) a minority of respondents gave their response in terms of distance rather than travel time, and of those, the majority stated that EV drivers are willing to drive 1 km when leaving the motorway for the purpose of charging their EV.[80]

(62) Based on the above, the Commission considers that, for the purposes of this Decision, for both Spain and Portugal the market for the installation, operation and maintenance of public EV charging stations is national in scope with elements of

75 Responses to question C.B.A.2.
76 Responses to question C.B.A.3.
77 Responses to question C.B.A.6.
78 Responses to questions C.B.A.3 and C.B.A.6.
79 Responses to question C.B.A.4.
80 Responses to question C.B.A.4.

local competition. For that reason, in addition to the analysis at the national level, the local impact of the Transaction will be analysed on the basis of local catchment areas.

4.3. Market for the provision of e-mobility services

4.3.1. Product market definition

4.3.1.1. The Commission's previous practice

(63) The Commission has previously considered the market for the provision of e-mobility services as a separate market from the market for the installation, operation and maintenance of public EV charging stations. However, the Commission left open whether further segmentations of this market are required, e.g., based on the charging speed of the EV charging stations available through a particular e-mobility service.[81]

4.3.1.2. The Notifying Parties' views[82]

(64) The Notifying Parties agree that e-mobility services constitute services different from the installation, operation, and maintenance of public EV charging stations.

(65) The Notifying Parties submit that segmenting this market based on charging speed or location of the public EV charging stations which they service would not reflect the reality of competition in the market because:

(a) from a supply-side perspective there is no difference for eMSPs in contracting with CPOs operating regular, fast or ultra-fast EV charging stations and CPOs tend to operate public EV charging stations covering the whole range of charging speeds, and it is in the interest of eMSPs to contract with multiple-speed EV charging stations to grant their customers access to the largest number of EV charging stations possible according to their needs;

(b) from a demand-side perspective, the technical solutions to grant customers access to EV charging stations do not differ depending on their charging speed.

(66) In any case, the Notifying Parties submit that, for the purposes of the Transaction, there is no need to determine the exact market definition as no competition concerns arise under any plausible market segmentation.

4.3.1.3. The Commission's assessment

(67) In relation to the market for the provision of e-mobility services, the majority of respondents to the market investigation stated that their responses, outlined in this section, are applicable to both Spain and Portugal.[83]

(68) The large majority of respondents to the market investigation stated that the installation, operation, and maintenance of public EV charging stations and the

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81 M.8870 – *E.ON / Innogy*, paragraph 212; and M.10311 – *Enel X / VWFL / JV*, paragraph 32.

82 Form CO, paragraphs 183 and 184.

83 Responses to question C.A.B.8 of the eRFI.

provision of e-mobility services are different services and are not interchangeable.[84]

(69) Although the market investigation was inconclusive as to whether there are eMSPs that focus on EV charging stations of a particular category (e.g., ultra-fast EV charging stations only),[85] the majority of the respondents who expressed a view confirmed that:

(a) the technical solutions provided by eMSPs to grant customers access to EV charging stations do not differ between regular, fast or ultra-fast EV charging stations.[86] For example, one respondent stated that '*the recharging service is the same regardless of the power of the charger*'.[87]

(b) eMSPs have an incentive to contract with CPOs offering all charging speeds (i.e. regular, fast and ultra-fast charging stations).[88] For example, a respondent stated that *eMSPs 'ensure that an EV driver is allowed to charge on different networks (CPO), and likewise in different type of chargers (all … chargers of a given CPO). Usually, an eMSP does not discriminate access to EV drivers depending on the charging speed. Usually, an EV driver pays for the eMSP service per each charging session, which is an incentive for an eMSP to make its service available on the largest number of charging points possible*'.[89]

(70) Moreover, as discussed in recital (48)(c), the market investigation responses indicate that eMSPs need to have both on-motorway and off-motorway EV charging stations in their network.

(71) Based on the above, the Commission considers that, for the purposes of this Decision and in line with previous practice, there is a market for the provision of e-mobility services, and that it can be left open as to whether further segmentations of this market are required, i.e, based on the charging speed of the EV charging stations available through a particular e-mobility service and/or for on- and off-motorway EV charging stations, because the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible segmentation of the market for the provision of e-mobility services.

4.3.2. Geographic market definition

4.3.2.1. The Commission's previous practice

(72) The Commission's recent decisional practice concluded that the geographic scope of the market for e-mobility services is national. This is because eMSPs tend to provide a unified nation-wide offer and pricing policy, particularly considering that these services are offered as digital applications generally available throughout the country where eMSPs are active.[90]

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84 Responses to question C.A.B.1 of the eRFI.
85 Responses to question C.A.B.6 of the eRFI.
86 Responses to question C.A.B.2 of the eRFI.
87 Responses to question C.A.B.3 of the eRFI.
88 Responses to question C.A.B.4 of the eRFI.
89 Responses to question C.A.B.5 of the eRFI.
90 M.8870 – *E.ON / Innogy*, paragraph 212; and M.10311 – *Enel X / VWFL / JV*, paragraph 52.

4.3.2.2. The Notifying Parties' views

(73) The Notifying Parties submit that, in line with the Commission's recent practice, the market for the provision of e-mobility services should be defined as national in scope.

(74) In any case, the Notifying Parties submit that there is no need to conclude on the exact geographic market definition as the Transaction does not give rise to any competition concerns under any plausible market segmentation.[91]

4.3.2.3. The Commission's assessment

(75) All the eMSPs who responded to the market investigation are active at, at least, a national level in Spain and/or Portugal, i.e. none are active at a sub-national level. A slight majority of eMSPs are only active at the national level, with the rest being active either EEA-wide or worldwide.[92]

(76) A large majority of the eMSPs who responded to the market investigation stated that they set their prices uniformly at the national level.[93]

(77) Based on the above, the Commission considers that, for the purposes of this Decision, the geographic scope of the market for the provision of e-mobility services is national for each of Spain and Portugal respectively.

4.4. Market for the ownership or operation of land and sites suitable for EV charging stations

4.4.1. Product market definition

4.4.1.1. The Commission's previous practice

(78) The Commission has not previously considered or defined a market for the ownership or operation of land and sites suitable for EV charging stations.

(79) However, in its 2023 EV Charging Report, the Commission noted that EV charging stations can be installed in a variety of sites:[94] (i) for on-street recharging, the sites for EV charging stations are on public streets, where the best sites include residential areas with limited private parking; (ii) for destination recharging, the sites for EV charging stations are at typical destinations (e.g. supermarkets, hotels gyms, car parks, work); and (iii) for on-route recharging, the sites for EV charging stations are akin to current fuel retailers (e.g. motorway service stations, recharging hubs).

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91 Form CO, paragraph 186.

92 Responses to question C.B.B.1 of the eRFI.

93 Responses to question C.B.B.3 of the eRFI.

94 2023 EV Charging Report, pages 39-40 and 44-48. When the installation is on public land, CPOs must engage with the site owner or local authorities to obtain the necessary planning permission and licenses for the installation of the recharger. When exploring options on private land (e.g., in the parking lot of a retail store), the process is likely to be quite different and more focused on the economic case.

4.4.1.2. The Notifying Parties' views[95]

(80) The Notifying Parties submit that it is appropriate to define a relevant product market for the ownership and operation of land and sites suitable for EV charging stations and that it should include both fuel station sites and non-fuel station sites (e.g. parking lots at restaurants, hotels, supermarkets) because:

(a) from a supply-side perspective, for the purpose of installing EV charging stations, fuel station sites and non-fuel station sites can be regarded as interchangeable.

(b) from a demand-side perspective, fuel station sites and non-fuel station sites are substitutable as the choice of where to locate EV charging stations is mostly driven by end-users' demand.

(81) The Notifying Parties submit that, for the purpose of defining the market, other assets and services typically offered in fuel stations are irrelevant because, motor vehicle fuels and electricity for mobility purposes are neither substitutable nor complementary products. Accordingly, the Notifying Parties submit that, apart from the land and sites it operates, BP's activity in the fuel retail market is irrelevant for the purposes of the Transaction.

(82) In any case, the Notifying Parties submit that the precise product market definition can be left open for the purposes of the Transaction as it does not give rise to any competition concerns irrespective of the plausible segmentation considered.

4.4.1.3. The Commission's assessment

(83) In relation to defining the product market for the ownership or operation of land and sites suitable for EV charging stations, the majority of respondents to the market investigation stated that their responses, outlined in this section, are applicable to both Spain and Portugal.[96]

(84) The large majority of the JV's future competitors and customers who responded to the market investigation stated that, from a CPO's perspective, non-fuel station sites are viable alternatives for fuel stations as potential locations for the installation, operation, and maintenance of public EV charging stations.[97] More specifically, the majority of the respondents confirmed that on-motorways non-fuel station sites are viable alternatives to fuel-station sites for the installation and operation of EV charging stations.[98] For example, one respondent stated that ''*although service stations are the ideal locations to install charging points for electric vehicles due to their configuration (accesses, auxiliary services, attending personnel), there are other alternatives that are also viable to host this type of installations such as parking areas service or restaurants*''.[99]

(85) Further, the market investigation tested what are, from a CPO's perspective, the main characteristics to look for in a specific type of land when choosing the location of future EV charging stations. The respondents said that those main

95 Form CO, paragraphs 201-206.
96 Responses to question C.A.C.3 of the eRFI.
97 Responses to question C.A.C.1 of the eRFI.
98 Responses to question C.A.C.4 of the eRFI.
99 Responses to question C.A.C.5 of the eRFI.

characteristics are the (i) proximity to roads, (ii) connection to grids, (iii) proximity to amenities, and (iv) location at a fuel station.[100]

(86) Based on the above, on balance, the Commission considers, for the purposes of this Decision, that the relevant product market is the market for the ownership or operation of land and sites suitable for EV charging stations, and that the question can be left open as to whether the market for the ownership or operation of land and sites suitable for EV charging stations should be further segmented by type of site (i.e., fuel station sites or non-fuel station sites), since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.4.2. Geographic market definition

4.4.2.1. The Commission's previous practice

(87) The Commission has not previously defined a relevant geographic market for the ownership or operation of land and sites suitable for EV charging stations.

4.4.2.2. The Notifying Parties' views

(88) The Notifying Parties submit that a market for ownership and operation of land or sites suitable for EV charging stations should be at least national in scope, because CPOs compete for available locations to install and operate their EV charging stations throughout and even outside the national territory. In any case, the Notifying Parties submit that the precise geographic market definition can be left open as the Transaction does not give rise to any competition concerns under any plausible market segmentation.[101]

4.4.2.3. The Commission's assessment

(89) The market investigation confirmed that for the market for the ownership or operation of land and sites suitable for EV charging stations the geographic scope is national. The majority of the market participants indicated that considerations of a location's characteristics and strategic value as a potential site for an EV charging station are the same across the entire country.[102]

(90) Based on the above, the Commission considers, for the purposes of this Decision, that the geographic scope of the market for the ownership or operation of land and sites suitable for EV charging stations is national for each of Spain and Portugal respectively.

4.5. Market for the retail supply of electricity

4.5.1. Product market definition

4.5.1.1. The Commission's previous practice

(91) The Commission's past decisional practice has consistently considered a distinct market for the retail supply of electricity, and the Commission has considered

100 Responses to question C.A.C.3 of the eRFI.
101 Form CO, paragraphs 208 and 209.
102 Responses to question C.B.C of the eRFI.

whether further segmentations based on the size of the customer, the type/source of electricity (e.g. renewable), or the type of electricity tariff would be appropriate.[103] The Commission has ultimately concluded that it would generally be appropriate to segment the market based on the size of the customer, but not on the type of electricity or tariff applicable to consumers.[104]

(92) In past decisions related to the e-mobility sector, the Commission distinguished (i) the retail supply of electricity to large customers connected to high and medium voltage grid from (ii) the retail supply of electricity to small industrial and residential customers that are connected to the low voltage grid.[105]

4.5.1.2. The Notifying Parties' views[106]

(93) The Notifying Parties agree with the Commission's conclusions to consider the retail supply of electricity to large customers connected to high and medium voltage grid to be distinct from the retail supply of electricity to small industrial and residential customers that are connected to the low voltage grid.

(94) However, the Notifying Parties submit that, for the purposes of the Transaction, there is no need to conclude on the exact market definition as the JV's public EV charging stations will be connected to the distribution network both in low and, to a larger extent, medium/high voltage, depending on the particular requirements of the public EV charging stations, and in any case no competition concerns would arise under any plausible segmentation.

4.5.1.3. The Commission's assessment

(95) The market investigation did not produce any evidence invalidating the Commission's decisional practice.

(96) Based on the above, the Commission considers, for the purposes of this Decision, that there are separate markets for (i) the retail supply of electricity to large customers connected to high and medium voltage grid and for (ii) the retail supply of electricity to small industrial and residential customers that are connected to the low voltage grid.

4.5.2. Geographic market definition

4.5.2.1. The Commission's previous practice

(97) The Commission has considered, and generally left open, whether the geographic scope of the market for the retail supply of electricity is national or regional (sub-national).[107]

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103 M.10173 – *Luminus / Essent Belgium*, paragraphs 9-19; and M.9587 – *Engie / EDP Renovaveis / EDPR Offshore España*, paragraphs 21-24.

104 M.10311 - *Enel X / VWFL / JV*, paragraphs 21-23; M.10173 – *Luminus / Essent Belgium*, paragraph 9; and M.9587 – *Engie / EDP Renovaveis / EDPR Offshore España*, paragraph 23.

105 M.10311 – *Enel X / VWFL / JV*, paragraph 74.

106 Form CO, paragraph 195.

107 M.10311 – *Enel X / VWFL / JV*, paragraphs. 41- 43; M.10173 – *Luminus / Essent Belgium*, paragraph 20; and M.9587 – *Engie / EDP Renovaveis / EDPR Offshore España*, paragraph 25.

4.5.2.2. The Notifying Parties' views

(98) The Notifying Parties submit that the market for the supply of electricity, independent of its further potential segmentations, is national in scope, but that there is no need to conclude on the precise geographic market definition for the purposes of the Transaction as no competition concerns will arise irrespective of the geographic scope considered.[108]

4.5.2.3. The Commission's assessment

(99) The market investigation did not produce any evidence invalidating the Commission's decisional practice.

(100) Based on the above, the Commission considers, for the purposes of this Decision, that the geographic scope of the markets for the retail supply of electricity is national for each of Spain and Portugal respectively.

5. COMPETITIVE ASSESSMENT

5.1. Legal framework for the competitive assessment

(101) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(102) In this respect, a merger may entail horizontal and/or non-horizontal (namely, vertical or conglomerate) effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Vertical effects are those deriving from a concentration where the undertakings concerned are active on different or multiple levels of the supply chain. A concentration may involve several types of effects. In such a case, the Commission will appraise horizontal and non-horizontal effects in accordance with the guidance set out in the relevant notices, i.e. the Horizontal Merger Guidelines[109] and the Non-Horizontal Merger Guidelines.[110]

(103) In assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger. In most cases, the competitive conditions existing at the time of the merger constitute the relevant comparison for evaluating the effects of a merger. However, in some circumstances, the Commission may take into account future changes to the market that can reasonably be predicted.[111]

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108 Form CO, paragraph 197.

109 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C31, 5.2.2004, p. 5.

110 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-Horizontal Merger Guidelines'), OJ C 265, 18.10.2008.

111 Horizontal Merger Guidelines, paragraph 9; Non-Horizontal Merger Guidelines, paragraph 20.

5.1.1. Horizontal non-coordinated effects

(104) Paragraph 24 of the Horizontal Merger Guidelines, which sets out the economic rationale underlying non-coordinated anti-competitive effects in horizontal mergers, states that a merger may significantly impede effective competition in a market by removing important competitive constraints on one or more firms. The most direct effect of the merger will be the loss of competition between the merging firms. In order to assess whether a notified merger will result in a significant impediment of effective competition on the basis of non-coordinated effects, the Commission therefore needs to analyse primarily the extent of the competitive constraint imposed pre-merger by each of the merging parties on each other.

(105) The Commission carries out an overall assessment of the likely effects of the Transaction arising from the elimination of important competitive constraints, taking into consideration the overall body of evidence in its file.[112] The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force.[113] Not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, each of which is not necessarily decisive in its own right, is also not an exhaustive list.[114] In any event, the Commission interprets market shares in the light of likely market conditions, for instance, if the market is highly dynamic in character and if the market structure is unstable due to innovation or growth.[115]

Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, the entry of new competitors on the market, and efficiencies.[116]

5.1.2. Non-horizontal non-coordinated effects

(106) A merger is said to result in vertical foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[117] Two forms of vertical foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure).[118] The second is where the merger is likely to result in foreclosure of upstream rivals by restricting their access to a sufficiently large customer base, i.e., when a supplier integrates with an important customer in the downstream market (customer foreclosure).[119]

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112 Horizontal Merger Guidelines, paragraph 13.
113 Horizontal Merger Guidelines, paragraphs 27 and following.
114 Horizontal Merger Guidelines, paragraphs 24-38.
115 Horizontal Merger Guidelines, paragraph 15.
116 Horizontal Merger Guidelines, paragraphs 64-88.
117 Non-Horizontal Merger Guidelines, paragraph 29.
118 Non-Horizontal Merger Guidelines, paragraph 31.
119 Non-Horizontal Merger Guidelines, paragraph 58.

(107) In assessing the likelihood of an anticompetitive input or customer foreclosure scenario, the Commission examines whether the merged entity would have the ability and incentive to foreclose access to inputs, to downstream markets by reducing its purchases from its upstream rivals or to otherwise foreclose its rivals, and whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[120]

5.2. Horizontal non-coordinated effects in the market for the installation, operation and maintenance of public EV charging stations

5.2.1. Notifying Parties' market share methodology

(108) The Notifying Parties provide market share estimates in relation to the market for the installation, operation and maintenance of public EV charging stations in Spain and Portugal, for (i) current (operational as of 1 June 2023) and (ii) pipeline (forward-looking or foreseeable within next three years[121]) scenarios. The current (operational) scenario is based on the Parties' own numbers of operational public EV charging points, together with the Eco-Movement database[122] for competitors. The pipeline scenario is primarily based on the Notifying Parties' own data for Iberdrola and (partly) BP[123], together with the Eco-Movement database, adjusted to the extent the Notifying Parties consider the market will change within the next three years.

(109) As regards the total market size of a foreseeable future, given the absence of data, the Notifying Parties estimate the extent to which competitors will develop and expand an operational public EV charging point infrastructure, with the starting point of the Eco-Movement database. In their methodology, the Notifying Parties assume that:

(a) on a conservative basis, only fuel stations will install EV charging points at their locations (i.e. excluding other plausible locations such as parking lots, restaurants, malls, stadiums or street more generally), and

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120 Non-Horizontal Merger Guidelines, paragraph 59.

121 The Notifying Parties' foreseeable scenario covers a period of approximately 2-3 years, and therefore refers to 2026, the moment when all the Parties' pipeline assets are expected to be deployed and fully operational. In addition, the Notifying Parties note that any attempt to estimate market shares beyond 2026 would necessarily need to be based on rough estimations based on originally set objectives which do not distinguish by location, charging speed or expected contribution to the Joint Venture, and are based on originally set objectives whose actual materialisation is uncertain, thus questioning their reliability as data sources. See Methodology Note, paragraph 16.

122 Which contains data on operational public EV charging infrastructure in Spain and Portugal. The Notifying Parties also made use, to a lesser extent, of MOBI.E publicly owned platform for Portugal, though for consistency, they relied on Eco-Movement as the main data source for market sizes and competitor's number of EV charging points in Portugal as well. See Methodology Note, paragraph 10.

123 While Iberdrola monitors and records information on its public EV charging points under development, including information on their exact location, charging speed, pipeline status and expected contribution to the Joint Venture, BP does not have clear visibility over its public EV infrastructure development plans in Spain and Portugal. Therefore, for BP's pipeline infrastructure, a mix between the '3 CP assumption' was conducted; (i) for BP branded fuel stations where BP had certainty it will build EV charging points, those numbers were used, (ii) for BP branded fuel stations where BP did not have certainty whether it will build EV charging points, the 3 CP assumption is followed), and (iii) for BP branded fuel stations where BP had certainty whether I will not build any EV charging points, such stations are assumed to hold 0 under the pipeline scenario. Methodology Note, paragraph 16.

(b) all fuel stations will have at least 3 EV charging points (the '3 CP assumption'), meaning that to those that currently have 0, 1 or 2 EV charging points (according to the Eco-Movement database), the Notifying Parties will add 3, 2 and 1 respectively (i.e. the Notifying Parties are increasing the number of EV charging points to 3 for all fuel stations that do not already have 3 EV charging points).

(110) The total market size and the corresponding market shares for operational and pipeline EV charging points at a given catchment area are calculated in terms of the number of public EV charging points that every EV charging station/brand holds within that catchment area.[124] These are identified following a charging speed-based[125] (i.e. differentiating between regular, fast and ultra-fast) and location-based market segmentation[126, 127] (i.e. on-motorway or off-motorway).

(111) Thus, market share estimates of the installation, operation and maintenance of operational public EV charging stations are provided for the following market segmentations; (i) overall operational public EV charging stations at national level, (ii) overall operational public EV charging stations at local level, (iii) operational public EV charging stations at local level following a charging speed-based market segmentation, (iv) operational public EV charging stations at local level following a location-based market segmentation and (v) operational and pipeline public EV charging stations at local level following both a charging speed-based and location-based market segmentation.[128]

(112) As to the methodology to identify affected markets, the Notifying Parties identify the affected markets as being those areas where there is a horizontal overlap, both Iberdrola and BP contribute public EV charging points to the Joint Venture, and the resulting combined market share exceeds 20% (that is, the contribution of the Notifying Parties to the Joint Venture amounts to more than 20% of the total public

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124 The Commission understands that the Notifying Parties chose the number of charging points as the relevant metric, rather than, e.g., volume of electricity sold or other, primarily as an objective metric absent knowledge of volumes sold by competitors.

125 The Notifying Parties propose the charging speed markets are identified as: regular (charging speeds ranging from 0 kW to – and including – 22 kW), fast (from 22 kW to 100 kW) and ultra-fast (equal or above 100 kW). However, the Commission proposes an alternative cut, following the EV Report classification, which suggests the following: regular (from 0 kW to – and including – 22 kW), fast (from 22 kW to 150 kW) and ultra-fast (equal or above 150 kW). As mentioned in Section 4.2.1.3, the Commission leaves open whether any of the two segmentations is more appropriate, and takes both as sensitivity. See Methodology Note, paragraph 29 and 30.

126 In order to identify whether a public EV charging station is on or off-motorway, the Notifying Parties propose the use of a 500 m width band along both sides of a given motorway. The Notifying Parties claim that this offsets the risk of classifying as off-motorway public EV charging points that are in fact on-motorway, it allows to factor in the market shares of all stations that despite being off-motorway are very close to an exit and aim at serving EV drivers driving on-motorway. The Notifying Parties claim this threshold is conservative, as unlike in fuel stations, considering the current scarcity, EV drivers are willing to exit the motorway to charge their EV in nearby public EV charging stations. See Methodology Note, paragraph 27.

127 The Notifying Parties apply different radii depending on whether an EV charging station is on- or off-motorway. For on-motorway, the Notifying Parties propose 50 km around each point, and they also provide data for 30 km and 40 km as sensitivity. As to off-motorway, the Notifying Parties propose 10 km around each station (located at least 500 m width away from the motorway), and they also provide data for 2.5 km, 5 km and 20 km as sensitivity.

128 As regards the charging speed under the pipeline scenario, in the absence of data (mostly BP, partly Iberdrola and for all competitors), the Notifying Parties calculate market shares assuming that all EV charging points can be both fast and ultra-fast (i.e., they belong to both charging speed-based market segments simultaneously). See Methodology Note, paragraph 38.

EV charging infrastructure already installed in a particular market). While the Commission overall considers the market share methodology proposed by the Notifying Parties reasonable, it considers that this methodology is not fully adequate and needs to be modified. Given the structural and economic link[129] maintained between the Notifying Parties and the Joint Venture (that is, regardless of whether an EV charging point is contributed to the Joint Venture or retained by the one of Notifying Parties, profits will be capitalised by the Notifying Parties for any switch by the EV users from the Joint Venture to the Notifying Parties and vice versa as a consequence of a price increase), the retained EV public charging points should also be considered as part of the Joint Venture's market share.[130] Therefore, for the purpose of this assessment, the Commission assessed all markets where the combined share of the Notifying Parties' contributed and retained EV charging points exceed 20% of the market.

5.2.2. Spain

(113) Iberdrola is active in the installation, operation and maintenance of public EV charging stations in Spain, operating as of 1 June 2023 a total of 4,134 EV charging points, which consists of EV charging points owned by Iberdrola and owned by third-parties.[131] BP recently became active in the installation, operation and maintenance of public EV charging stations in Spain where, as of 1 June 2023, it owns and operates a public EV charging network of 28 public EV charging points.[132] Of these currently existing public EV charging points, the Notifying Parties intend to contribute immediately post-Transaction [200-3000] charging points to the newly created JV ([200-250] from Iberdrola and [0-50] from BP, i.e. all of BP's current charging points),[133] leading to horizontal overlaps in Spain at national and local levels.

(114) In addition, the Transaction consists not only of the contribution of operational but also of pipeline public EV charging stations to the JV. As of 1 June 2023, the JV's development plan, which includes those pipeline public EV charging points to be contributed by the Parties until 2026, foresees that the JV will be operating up to […][134] public EV charging points in Spain by the end of 2026.

5.2.2.1. Market structure

(115) According to the Horizontal Merger Guidelines in the assessment of the effects of a merger, market shares constitute a useful first indication of the structure of the markets at stake and of the competitive importance of the relevant market players.[135]

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129 I.e., the fact that the Notifying Parties will be shareholders jointly controlling the JV.

130 The retained EV public charging points will essentially be from Iberdrola.

131 Form CO, Table 6.

132 Form CO, Table 6.

133 Form CO, Table 7.

134 Including the Notifying Parties' current pipeline projects that are foreseen to be contributed to the JV, as well as assumed pipeline projects for BP's fuel stations for which BP does not currently have visibility over their public EV charging infrastructure development plans, and for which the Parties assumed that BP's pipeline data consists of 3 pipeline public EV charging points in each of those BP-branded fuel stations in Spain and Portugal. See Form CO, Annex 8 - Methodology Note, paragraph 16.

135 Horizontal Merger Guidelines, paragraph 14.

(116) The Notifying Parties provided estimates for market shares based on the number of public EV charging points in Spain, based on those in operation as of 1 June 2023.[136] Based on these estimates, the combined share of the Parties would not exceed 20% at national level in the market for the installation, operation and maintenance of public EV charging stations in Spain (their combined market share would be approximately [10-20]%).[137]

(117) The Parties further submitted estimates for market shares considering potential separate national markets based on categories of charging speed, i.e., separately for regular, fast and ultra-fast charging stations. In that case, the Parties' combined share would be approximately [10-20]%, [20-30]%[138] and [10-20]% respectively and, therefore, would not amount to affected markets.[139]

(118) The same is true if one were to consider separate national markets based on the location of the charging points, i.e., separately for on-motorway and off-motorway charging stations. In that case, the Parties' combined share would not exceed 20%.[140]

(119) Lastly, the Parties' combined share would remain below 20% if one were to consider separate national markets based on a combination of (i) the location of the charging points (i.e., on- or off-motorway) and (ii) the charging speed (i.e., regular, fast or ultra-fast). In that case, the Parties' combined share would exceed 20% only under one of these plausible delineations, i.e., in the hypothetical separate market for the installation, operation and maintenance of fast (based on the Parties' categorisation, i.e., 22-100 kW) public EV charging stations on-motorways in Spain, where the Parties' combined share amounts to [20-30]%.[141] Therefore, even such narrower product market delineation would not lead to affected markets at the national level in Spain.

(120) Therefore, the Transaction does not give rise to an affected market at national level under any plausible product market segmentation.

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136 Based on the Notifying Parties' actual data and estimates based on data sourced from the Eco-Movement database, see Form CO, Annex 8 - Methodology Note.

137 Form CO, Table 8.

138 In the potential market for the installation, operation and maintenance of fast public EV charging stations at national level, the Parties' combined share would amount to [20-30]% under the definition submitted by the Parties for 'fast' charging that would cover the range of 22-100kW. The Commission notes however, that the Parties' combined share on this potential market would amount to only [10-20]% based on a definition of 'fast' charging as retained by the 2023 EV Charging Report (i.e., 22-150kW). In addition, the share increment is *de minimis* (i.e., [0-5] percentage points) and merely results from a contribution by Iberdrola of [5-10] fast EV charging points to the JV, whereas BP does not own or operate any fast EV charging points. The Commission therefore considers that this overlap does not reflect a structural change in the market and will therefore not further assess the potential national market for the installation, operation and maintenance of fast public EV charging stations in Spain in this decision.

139 Form CO, Table 8.1.

140 Notifying Parties' response to follow-up to RFI 10.

141 Response to RFI 12, question 1. However, the overlap merely results from a contribution by Iberdrola of fast EV charging points to the JV, whereas BP does not own or operate any fast EV charging points in Spain. Given, further, that the combined share only slightly exceeds 20%, the Commission considers that this overlap does not reflect a structural change in the market and will therefore not further assess the potential national market for the installation, operation and maintenance of fast public EV charging stations on-motorways in Spain in this decision.

(121) The Notifying Parties submitted that the Transaction would give rise to horizontally affected markets only under a narrower segmentation of the market at local level, broken down by both charging speed and type of location. The Notifying Parties have therefore submitted share estimates for all plausible segmentations at local level as summarised in Table 2 below.

Table 2 – Summary of the number of local catchment areas where the Parties' combined share exceeds 20% based on segmentation by location and charging power output in Spain (current scenario for 2023)

Location	Power output ('charging speed')	Catchment area ([142])	Number of local areas with combined market shares ≥20%
On-Motorway	Fast (22-100kW)	30km	--
		40km	--
		50km	--
	Ultra-fast (≥100kW)	30km	2
		40km	4
		50km	9
Off-Motorway	Fast (22-100kW)	2.5km	--
		5km	--
		20km	--
	Ultra-fast (≥100kW)	2.5km	--
		5km	5
		20km	8

Source: Form CO, Annex 15.

(122) Absent any indication that the Transaction could potentially lead to the creation or the strengthening of a dominant position even with combined shares below 40%, the Commission has assessed whether the Transaction could raise serious doubts as to its compatibility with the internal market for any local catchment area in which the Parties' combined share exceeds 40%. On the local level, the Transaction would lead to combined shares of the Parties of more than 40% only under a segmentation combining both a segmentation (i) by charging speed and (ii) by location (i.e., on- vs. off-motorway), as specified below. The following Table 3 to Table 7 provide the Parties' share estimates for all local areas, in which the Parties' combined shares would exceed 40%, i.e., in the city of Alicante and in or around the towns of Elche, Torrevieja, Mutxamel and San Juan-de-Alicante, indicating in each case the most plausible delineations of the relevant geographic catchment areas,[143] which are the installation, operation and maintenance of ultra-fast[144] public EV charging stations:

([142]) On-motorway defined as the relevant distance on the motorway from the Parties' relevant EV charging stations, including a band of 500m along each side of the motorway to account for EV charging stations located near motorway exit points. Off-motorway defined as centroids around the Parties' relevant EV charging stations with the (crow-fly) radius as indicated in the table.

[143] The tables are based on the most conservative scenarios and show the Parties' and their competitors' shares based either the Parties speed classification or the 2023 EV Charging Report Classification, depending on which classification gives rise to the greater combined market shares of the Parties.

[144] Using the 2023 EV Charging Report classification of 'ultra-fast' charging speed (i.e., >150 kW) for the areas of Elche, Torrevieja, Mutxamel and San Juan-de-Alicante, and the Parties' charging speed

- On-motorway in the local area of Elche, using a 40km distance;
- On-motorway in the local area of Torrevieja, using a 40km distance;
- Off-motorway in the local area of Alicante, using a 20km radius;
- Off-motorway in the local area of Mutxamel (Alicante), using a 5km radius; and
- Off-motorway in the local area of San Juan-de-Alicante, using a 5km radius.

Table 3 – Number-based[145] market shares for the installation, operation and maintenance of public EV charging stations in the local area of Elche, on-motorway, ultra-fast (1 June 2023)

Undertaking	2023 EV Charging Report Classification					
	30km		40km		50km	
	Public EV charging points	Market share	Public EV charging points	Market share	Public EV charging points	Market share
Joint Venture	[…]	[90-100]%	[…]	[90-100]%	[…]	[70-80]%
Iberdrola (contributed)	[…]	[90-100]%	[…]	[80-90]%	[…]	[60-70]%
BP (contributed)	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Iberdrola (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
BP (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	[…]	[90-100]%	[…]	[90-100]%	[…]	[70-80]%
Ionity	[…]	[0-5]%	[…]	[0-5]%	[…]	[10-20]%
Others	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
TOTAL MARKET	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Reply to RFI 10.

Table 4 – Number-based market shares for the installation, operation and maintenance of public EV charging stations in the local area of Torrevieja, on-motorway, ultra-fast (1 June 2023)

Undertaking	2023 EV Charging Report Classification					
	30km		40km		50km	
	Public EV charging points	Market share	Public EV charging points	Market share	Public EV charging points	Market share
Joint Venture	[…]	[50-60]%	[…]	[50-60]%	[…]	[50-60]%
Iberdrola (contributed)	[…]	[0-5]%	[…]	[50-60]%	[…]	[50-60]%
BP (contributed)	[…]	[50-60]%	[…]	[5-10]%	[…]	[5-10]%
Iberdrola (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%

classification (i.e., >100 kW) for Alicante. For completeness, the Commission notes that in the Alicante area using catchment radii of 5 km and 20 km respectively, the Parties' combined shares would also exceed 40%. However, given that the JV's scope will focus on ultra-fast EV charging stations and that the contribution of fast EV charging stations by Iberdrola to the JV concerns only a very limited number of stations, i.e., the large majority of fast EV charging stations in the respective Alicante catchment areas will be retained by Iberdrola and, hence, not entail a structural change in the market, the Decision will not further assess the fast charging speed category for the Alicante area.

145 Number-based market shares refer to shares in terms of number of EV charging points.

Undertaking	2023 EV Charging Report Classification					
	30km		40km		50km	
	Public EV charging points	Market share	Public EV charging points	Market share	Public EV charging points	Market share
BP (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	[…]	[50-60]%	[…]	[50-60]%	[…]	[50-60]%
Tesla	[…]	[0-5]%	[…]	[30-40]%	[…]	[30-40]%
Others	[…]	[50-60]%	[…]	[10-20]%	[…]	[10-20]%
TOTAL MARKET	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Reply to RFI 10.

Table 5 – Number-based market shares for the installation, operation and maintenance of public EV charging stations in the local area of Alicante, off-motorway, ultra-fast (1 June 2023)

Undertaking	Parties' Classification					
	2.5km		5km		20km	
	Public EV charging points	Market share	Public EV charging points	Market share	Public EV charging points	Market share
Joint Venture	[…]	[30-40]%	[…]	[20-30]%	[…]	[40-50]%
Iberdrola (contributed)	[…]	[30-40]%	[…]	[5-10]%	[…]	[20-30]%
BP (contributed)	[…]	[0-5]%	[…]	[10-20]%	[…]	[10-20]%
Iberdrola (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
BP (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	[…]	[30-40]%	[…]	[20-30]%	[…]	[40-50]%
Porsche Smart Mobility GmbH	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%
Placetoplug	[…]	[30-40]%	[…]	[5-10]%	[…]	[10-20]%
Others	[…]	[30-40]%	[…]	[50-60]%	[…]	[40-50]%
TOTAL MARKET	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Reply to RFI 10.

Table 6 – Number-based market shares for the installation, operation and maintenance of public EV charging stations in the local area of Mutxamel (nearby Alicante), off-motorway, ultra-fast (1 June 2023)

Undertaking	2023 EV Charging Report Classification					
	2.5km		5km		20km	
	Public EV charging points	Market share	Public EV charging points	Market share	Public EV charging points	Market share
Joint Venture	[…]	[50-60]%	[…]	[60-70]%	[…]	[30-40]%
Iberdrola (contributed)	[…]	[0-5]%	[…]	[20-30]%	[…]	[5-10]%
BP (contributed)	[…]	[50-60]%	[…]	[40-50]%	[…]	[20-30]%
Iberdrola (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
BP (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	[…]	[50-60]%	[…]	[60-70]%	[…]	[30-40]%
Porsche Smart Mobility GmbH	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%
Others	[…]	[50-60]%	[…]	[40-50]%	[…]	[50-60]%
TOTAL MARKET	[…]	**100%**	**[…]**	**100%**	**[…]**	**100%**

Source: Reply to RFI 10.

Table 7 – Number-based market shares for the installation, operation and maintenance of public EV charging stations in the local area of San Juan-de-Alicante, off-motorway, ultra-fast (1 June 2023)

Undertaking	2023 EV Charging Report Classification					
	2.5km		5km		20km	
	Public EV charging points	Market share	Public EV charging points	Market share	Public EV charging points	Market share
Joint Venture	[…]	[90-100]%	[…]	[60-70]%	[…]	[30-40]%
Iberdrola (contributed)	[…]	[90-100]%	[…]	[30-40]%	[…]	[5-10]%
BP (contributed)	[…]	[0-5]%	[…]	[30-40]%	[…]	[20-30]%
Iberdrola (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
BP (retained)	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	[…]	[90-100]%	[…]	[60-70]%	[…]	[30-40]%
Porsche Smart Mobility GmbH	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%
Others	[…]	[0-5]%	[…]	[30-40]%	[…]	[50-60]%
TOTAL MARKET	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Reply to RFI 10.

(123) Due to the nascent and dynamic nature of the market for the installation, operation and maintenance of public EV charging stations in Spain, as discussed at paragraphs (146) et seq. below, the Notifying Parties also submitted forward-looking market data based on their expected future position, as explained at section 5.2.1 above. Under such scenario, the following numbers of local areas would be affected.

Table 8 – Summary of locally affected areas based on segmentation by location and charging power output, in Spain (forward-looking scenario for 2026)

Location	Power output ('charging speed')	Catchment area[146]	Number of local areas with combined market shares ≥20%
On-Motorway	Fast (22-100kW)	30km	16
		40km	11
		50km	12
	Ultra-fast (≥100kW)	30km	72
		40km	65
		50km	80

[146] On-motorway defined as the relevant distance on the motorway from the Parties' relevant EV charging stations, including a band of 500m along each side of the motorway to account for EV charging stations located near motorway exit points. Off-motorway defined as centroids around the Parties' relevant EV charging stations with the (crow-fly) radius as indicated in the table.

Location	Power output ('charging speed')	Catchment area[146]	Number of local areas with combined market shares ≥20%
Off-Motorway	Fast (22-100kW)	2.5km	44
		5km	49
		20km	25
	Ultra-fast (≥100kW)	2.5km	55
		5km	66
		20km	12

Source: Form CO, Annex 15.

5.2.2.2. The Notifying Parties' views

(124) The Notifying Parties submit that the Transaction will not give rise to any competition concern at local level for the following reasons:

(125) *First*, the competitive analysis should be considered at the national level since competition between CPOs generally takes place nationally and prices are set uniformly across the country. At national level, however, the Transaction does not even give rise to horizontally affected markets in Spain.[147]

(126) *Second*, the market is in its infancy and will be subject to substantial growth in the near future, supported by political and legislative initiatives[148] and with a long list of actual and potential competitors either entering or expanding in this sector, such as energy companies Repsol, Endesa, EDP, and Naturgy, 'EV natives' such as Tesla, Wenea, Zunder, Ionity and PowerDot, fuel station networks including Shell, Cepsa and Galp, and vehicle OEMs such as Audi, BMW and Mercedes-Benz.[149]

(127) This market dynamism and overall growth is further reflected by the fact that Iberdrola's historic market shares in public EV charging stations remained relatively stable between [10-20]% throughout the last three years despite the substantial increase in Iberdrola's public EV charging infrastructure in Spain over the same period, which almost doubled year-on-year (from approximately [800-900] in 2020 and approximately [1,500-1,600] in 2021 to approximately [2,900-3,000] in 2022).[150] The trend of market expansion is expected to continue in the coming years.[151]

147 Form CO, paragraphs 236 et seq.

148 For example, Spanish Royal Decree-Law 29/2021 adopting urgent measures in the field of energy to promote electric mobility sets out, among other things, a series of requirements for EV infrastructure deployment in private and public parking lots, depending on the number of parking spaces within each parking lot, as well as an obligation for certain fuel stations to install EV charging stations on their premises, see Form CO, paragraphs 228 and 232.

149 Form CO, paragraph 230. Examples of the development plans of some of these competitors include: (i) Repsol (the leading fuel stations operator in Spain) plans to have fast and ultra-fast EV charging stations every 50 km on the main road corridors in Spain and Portugal and has agreements with Kia Motors and the transport company SEUR; (ii) Endesa (a leading energy company, already with a strong presences in the EV sector) has a partnership with Cepsa (the second largest operator of fuel stations in Spain) to develop a public network of ultra-fast EV charging stations in Spain and Portugal.

150 Form CO, paragraph 239.

151 Form CO, paragraph 239.

(128) Therefore, in light of the nascent and fast evolving nature of the EV charging space in Spain, considering the JV's market share in isolation and from a static perspective would be erroneous, as the current position of CPOs might not reflect the competitive conditions that will prevail in the future.[152]

(129) *Third*, in each affected local area, there are actual competitors already active and actual and potential competitors have plenty of scope to expand and enter. In particular, in each affected local area, the Parties currently face – and will continue to face – at least three existing competing operators of public EV charging stations, including players such as Repsol, Ionity, Tesla and Wenea, whose charging stations are often strategically located in the relevant local area to cover, for instance, the major motorway exits or important waypoints between major travel destinations.[153]

(130) The Parties' rival CPOs will have numerous alternative locations on- and off-motorways, which are suited for the installation and operation of public EV charging stations within the respective local areas, including, for instance, on camping grounds, shopping malls, commercial zones and fuel stations. Even if on-motorways fuel stations were considered the only available locations for the future installation of additional on-motorway ultra-fast or other public EV charging infrastructure, rival CPOs would have sufficient alternative locations to effectively compete with the Parties in each of the affected local areas.[154]

(131) *Fourth*, in many locally affected areas, the JV's estimated market share practically corresponds to Iberdrola's pre-Transaction share and, therefore, represents a mere transfer of the Iberdrola's position (i.e., the full contribution of Iberdrola's current charging points to the JV) rather than a structural change in the market.[155]

(132) *Fifth*, in many of the affected local areas where the Parties' combined market shares exceed 40%, the large majority of the respective share originates from Iberdrola's current public EV charging hubs located in a single geographic point (such as, e.g., the Iberdrola/Porsche ultra-fast public EV charging hub in Elche), and, therefore, does not reflect a particularly strong geographic coverage across the relevant local area.[156]

(133) *Sixth*, the JV's public EV charging stations are facing significant out-of-market constraints. This is in particular the case for its on-motorway stations that remain constrained by numerous off-motorway stations that are strategically located to serve also EV drivers on the respective motorway.[157]

(134) Regarding the local areas in which the Parties would have a combined share exceeding 20% when taking account of the Parties' currently planned pipeline projects, and under the assumptions relating to the growth in the number of EV charging points of the Parties' competitors as set out at paragraph (109) above, the Notifying Parties submit that the Transaction will not give rise to any competition concern for the following reasons:

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152 Form CO, paragraphs 247, 259, 276 and 285.
153 Form CO, paragraphs 245, 257, 275, and 284.
154 Form CO, paragraphs 248, 277 and 286.
155 Form CO, paragraph 243.
156 Form CO, paragraphs 250 and 262.
157 Form CO, paragraphs 251, 263 and 287

(135) *First*, in only 30% of all local areas in Spain where there is a horizontal overlap between the Parties' activities would the JV's market share exceed 20%. In approximately 96% of all local areas in which the Parties would have a combined share exceeding 20%, the Joint Venture's market share would be in the range of 20-40%, a value unlikely to give rise to competition concerns. Only in approximately 4% of the identified areas would the JV's market share exceed 40%. There would be no identified affected areas where the JV would have a market share in excess of 60%.[158]

(136) *Second*, the methodology followed to carry out this economic assessment is extremely conservative and clearly overstates the estimated market share that could be reasonably attributed to the JV. As a result, any local market share of the JV conservatively estimated to exceed 20% in the near future cannot be taken as reflective of any measure of the JV's competitive strength in a fast-growing market, where more and more companies are planning to enter with material investment and infrastructure deployment plans.[159]

(137) *Third*, there are multiple alternative CPOs already active or expected to be active in the near future in each of the local areas identified. Indeed, there is no affected local market where the JV is (or is expected to be) the only CPO installing and operating fast and/or ultra-fast public EV charging stations. The presence of alternative CPOs will exert a substantial competitive constraint over the JV immediately post-Transaction. CPOs already present in these affected local areas include Tesla, Wenea, Ionity, Endesa and Zunder, amongst others.[160]

(138) *Fourth*, the Parties' did not identify any affected area without available locations (i.e. not captured by the JV) for the installation, operation and maintenance of fast and/or ultra-fast public EV charging stations other than BP's fuel stations, even when artificially reducing available locations to third-party fuel stations exclusively and thereby ignoring all non-fuel stations locations as potential sites for the installation of public EV charging stations.[161]

(139) *Fifth*, the JV's estimated market share might not accurately show its geographic coverage in the identified affected areas. The above-mentioned market share methodology uses the number of public EV charging points as a proxy to estimate CPOs' strength in this market. However, CPOs typically install and operate several public EV charging points at the very same site. The Parties expect that, even in local areas where the JV is expected to have a larger market share based on the number of charging points, its competitors may have a wider coverage of the local affected area as their public EV charging points are (or are expected to be) located in different sites spread across the area.[162]

5.2.2.3. The Commission's assessment

(140) Under a static assessment of the market structure based on the number of public EV charging stations in operation as of 1 June 2023, and depending on the radius retained for each catchment area, the Transaction leads to a maximum of 9 locally

158 Form CO, paragraph 299.
159 Form CO, paragraphs 300-301.
160 Form CO, paragraph 302.
161 Form CO, paragraph 302.
162 Form CO, paragraph 302.

affected areas on-motorway and to a maximum of 8 locally affected areas off-motorway. The Transaction leads to locally affected areas with a combined share of the Parties of more than 40% in six areas across Spain, of which three each for (i) ultra-fast on-motorway public EV charging stations, which are located around the towns of Elche (two local areas), and Torrevieja, and (ii) ultra-fast off-motorway public EV charging stations, which are located around Alicante (Alicante, Mutxamel and San Juan-de-Alicante), which are assessed below.

5.2.2.3.1. Ultra-fast on-motorway public EV charging stations

5.2.2.3.1.1. Elche

(141) In proximity to the town of Elche, Iberdrola is operating 2 public EV charging hubs with ten ultra-fast EV charging points each at the motorway service stations 'Area de Elche' on motorway A-70 in both directions of travel, both of which will be contributed to the JV. Elche is located in the broader area of Alicante, as shown in Figure 2 below.

(142) The Commission notes at the outset that, as shown in Figure 2 below, both ultra-fast public EV charging hubs nearby Elche currently operated by Iberdrola and to be contributed to the JV are located within virtually the same geographic location, creating one macro area at local level of largely overlapping centroids. Therefore, the effects of the Transaction around these two centroids will be assessed together as one catchment area.

Figure 2 – Parties' and their competitors' geographic coverage in the local area (40 km) around Iberdrola's ultra-fast EV charging hubs in Elche[163]

Source: Response to Question 4, RFI 10 and to Question 2, RFI 12.[164]

163 The Iberdrola EV charging hub indicated as 'local market operator' in the map will be contributed to the JV.

(143) As shown in Table 3 above, in the area of Elche the Transaction would lead to high combined market shares of up to [90-100]% in the ultra-fast charging segment on-motorways, when applying a geographic delineation of 40 km distance as the most conservative approach for this catchment area.[165] The Commission considers a delineation of 40 km to be the most conservative approach for this catchment area, because with a 50 km delineation the combined market shares would only be [70-80]%, whereas under a narrower approach such as 30 km or even 20 km, the catchment area would not even give rise to an affected market. However, despite the high shares, the Commission considers that the Transaction does not give rise to concerns even under the most conservative delineation of 40 km, for the reasons set out below.

(144) *First*, [parties' asset retention/contribution plans]. The large majority of the JV's market share post-Transaction will result from a transfer of Iberdrola's previously held market share in that area, which currently corresponds to [10-20] charging points, or a share of up to [80-90]% (i.e., within the 40 km distance) depending on the geographic delineation retained. Hence, the increment from the additional market share contributed by BP, i.e., [0-5] charging points, amounts at maximum to [5-10] percentage points (i.e., when using a 40 km distance) depending on the geographic delineation retained.

(145) *Second*, the Notifying Parties are not considered to be close competitors based on parameters such as the scope of their EV charging network and number of charging points and the availability at their charging pool sites of certain amenities (e.g., restrooms, shops, restaurants/cafés/vending machines). Whereas Iberdrola has been ranked by the majority of respondents that stated a view as the strongest player overall, closely followed by Endesa X Way and Repsol, BP has been ranked only around 9th position in the market.[166] The Commission notes that Repsol, one of the closest competitors to Iberdrola and, hence, the JV post-Transaction, is currently active in the Elche catchment area.

(146) *Third*, the Spanish EV charging sector is still nascent and growing and current market positions may not provide a sufficiently clear indication of the structure of the market and of the competitive importance of the relevant market players in the foreseeable future. Indeed, the large majority of respondents having stated a view in response to the market investigation expects the Spanish market for the installation, operation and maintenance of public EV charging stations to '*strongly grow*' through 2026.[167] For instance, one respondent stated that the '*[m]arket is still very green and there is plenty of opportunities for other players to continue deploying and entering the market*.'[168] Asked about how many EV charging stations respondents expect there to be on average at currently existing fuel stations by the end of 2026, the large majority indicated '*three*' or '*more than three*'.[169]

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164 File name: 'M.11128 - Parties_ response to RFI 10 - Map - IB_ES_OWN_A-ELCHE-007 - EV Report Classification.png'.

165 This scenario is based on a definition of 'ultra-fast' charging as retained by the 2023 EV Charging Report (i.e., >150kW). Under the definition submitted by the Parties for 'ultra-fast' charging that would cover the range of ≥100kW, the Parties' combined market share would amount to 83%. However, under both scenarios the market structure would not materially differ. The Commission will therefore use the more conservative definition for the purpose of this decision.

166 Responses to questions D.A.1 and D.A.A.3 of the eRFI.

167 Responses to question D.A.A.6 of the eRFI.

168 Response to question D.A.A.2 of the eRFI.

169 Responses to question D.A.A.6-2 of the eRFI.

This general expectation is supported by the expansion plans of competitors who responded to the market investigation. Asked about how many additional public EV charging points respondents that are active as a CPO plan to deploy across Spain in the coming three years (i.e. until the end of 2026), eleven respondents provided summary figures for their current plans ranging from around 400 to 3,000 additional public EV charging points by the end of 2026, i.e., an average of almost 1,000 additional charging points per respondent having stated a view.[170] When accounting for the numerous CPOs that did not indicate their plans but can be reasonably expected to expand in the coming years, the Commission considers that the resulting growth rate broadly corresponds with an average of at least three public EV charging points at existing fuel stations across Spain. The Commission further considers that this expected market growth holds true for the Elche area, as the market investigation has not revealed any particularities that would indicate a different conclusion.

(147) In addition, the Commission considers that potential entrants in the local area of Elche will have a sufficient number of alternative locations available for the installation of future public EV charging stations, both at existing fuel stations not belonging to the BP network and at non-fuel station sites.[171] On the basis of the regulatory targets[172] and the expected growth rate[173] for additional public EV charging stations in Spain, expansion by current competitors in the Elche area and/or entry by additional CPOs into the area appears sufficiently likely to take place. Such entry would also be timely. The large majority of respondents to the market investigation having stated a view indicated that from the moment the decision to install EV charging station(s) is made, it typically takes between 1-3 years until such station is fully operational, i.e., within the 2026 horizon of the Commission's assessment in this case.[174]

(148) Moreover, when considering the expected future deployment of additional public EV charging points (i.e., resulting in three charging points per fuel station on average[175]) at on-motorway fuel stations (both third parties' and BP's) within the Elche area, the JV's market shares are expected to decrease to approximately [20-30]% by the end of 2026, as shown in Table 9 below.[176] Given that this dynamic scenario disregards other sites, i.e. non-fuel station sites, at which rival CPOs could install additional ultra-fast public EV charging stations, the Commission considers it conservative or, at least, not overestimating rival CPOs likely future market position in the relevant local area.

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170 Responses to question D.A.A.6-3 of the eRFI.

171 Form CO, paragraph 260 and Annexes 10 and 11.

172 See paragraph (24) above.

173 See paragraph (146) above.

174 Responses to question D.A.A.11 of the eRFI.

175 As described at section 5.2.1 above.

176 Under this forward-looking scenario, the number of public EV charging points operated by the Parties and the JV in the Elche area would not remain static. The Parties submit that for the purpose of market share estimation when considering both operational and pipeline public EV charging points, both the JV's and (if applicable) the Parties' retained public EV charging points within this affected local area have been increased to reflect the Parties' pipeline data; Form CO, Annex 8 – Methodology Note.

Table 9 – Parties' estimated future combined market share in the local area around Elche (by end of 2026)

Undertaking	40 km	
	Public EV charging points	Market share
Joint Venture	[…]	[20-30]%
Iberdrola (retained)	[…]	[0-5]%
BP (retained)	[…]	[0-5]%
Combined	[…]	[20-30]%[177]
Others	[…]	[70-80]%
Total market	[…]	100%

Source: Form CO, Annex 15.

(149) *Fourth*, there are currently already a significant number of ultra-fast public EV charging stations operated by third-party CPOs off-motorway in the local area around Elche. Despite not being located on the motorway, these are strategically located in proximity to motorway exit points to attract EV drivers from the motorway and, therefore, can be considered to exert additional competitive (out-of-market) constraints over the JV post-Transaction.[178] Out of [20-30] additional ultra-fast public EV charging points put forward by the Parties as exerting such competitive constraint, at least [5-10] are located within 2-3 km from a motorway exit point in the relevant local area, which is well within EV drivers' willingness to drive for 5 minutes or less as indicated by the majority of respondents to the market investigation.[179] For instance, the Commission notes that GSS Power is currently installing 2 additional ultra-fast EV charging stations in fewer than five minutes driving distance off the motorway on which Iberdrola's current EV charging stations are located, on one of the main routes, connecting the town of Elche with the motorway, i.e. route N-340.[180]

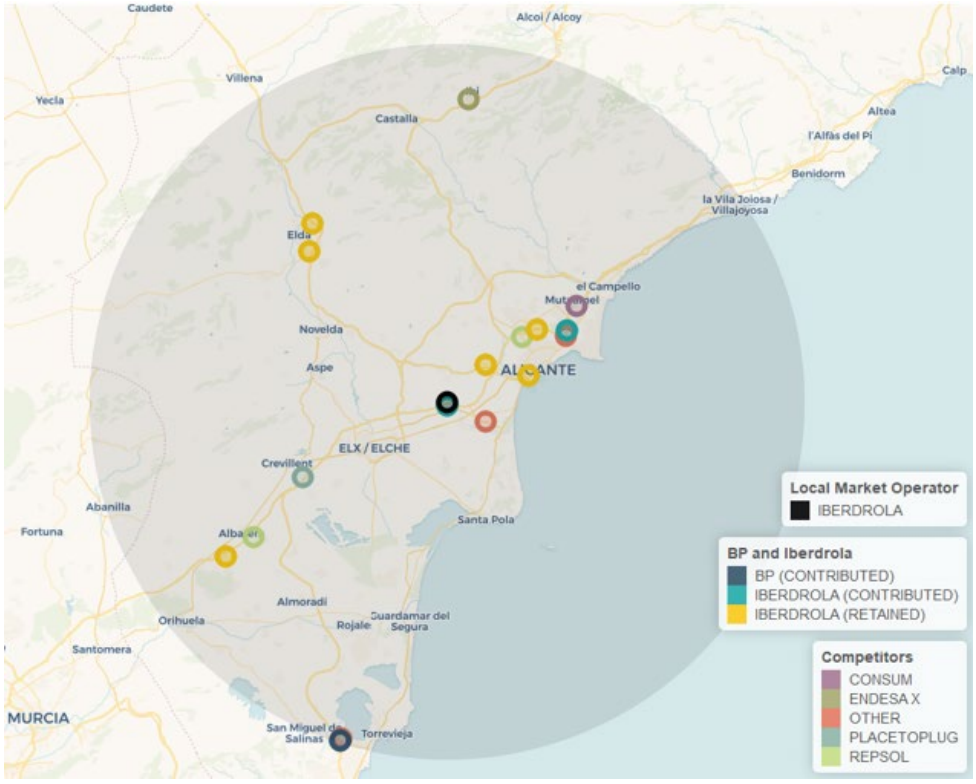
177 Corresponding to Scenario 8B, site IB_ES_PIP_A-ELCHE-030. See Form CO, Annex 15.

178 Although it does not rule out that 'fast' public EV charging points strategically located in proximity to motorway exits could exert additional competitive (out-of-market) constraints, the Commission has not assessed such potential constraints for the purposes of this decision.

179 See paragraph (61) above. For off-motorway driving time and distance, the Commission assumes an average driving speed of 50 km/h, at which EV drivers would travel up to about 4 km from the motorway exit.

180 According to GSS Power's website, available at https://gsspowersl.com/en/recharge-points/.

Figure 3 – Parties' and their competitors' geographic coverage in the local area (40 km) around Iberdrola's ultra-fast EV charging hubs in Elche (including out-of-market EV charging stations)[181]



Source: Response to Question 2, RFI 9.[182]

(150) Based on the above, the Commission concludes that despite the high current combined market share in the ultra-fast charging segment on-motorways within a 40 km catchment area around the Parties' public EV charging stations nearby Elche, the Transaction would not give rise to competition concerns as a result of horizontal effects in the relevant affected local area.

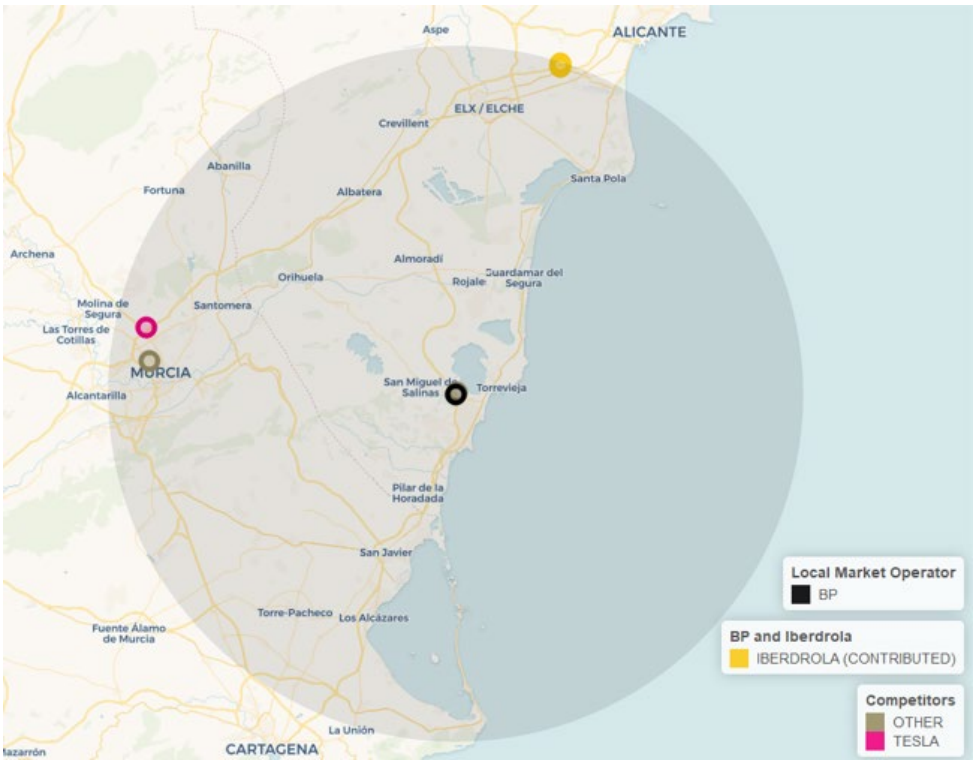
5.2.2.3.1.2. Torrevieja

(151) In proximity to the town of Torrevieja, BP is operating [0-5] ultra-fast public EV charging points at its La Coronelita fuel station, which will be contributed to the JV. Torrevieja is located in the broader area of Alicante and Murcia, as shown in Figure 4 below.

181 The Iberdrola EV charging hub indicated as 'local market operator' in the map will be contributed to the JV.

182 File name: M.11128 - Map - IB_ES_OWN_A-ELCHE-007.png

Figure 4 – Parties' and their competitors' geographic coverage in the local area (40 km) around BP's ultra-fast EV charging station in Torrevieja[183]



Source: Response to Question 4, RFI 10.

(152) As shown in Table 4 above, in the area of Torrevieja the Transaction would lead to combined market shares of up to [50-60]% in the ultra-fast charging segment on-motorways, when applying a geographic delineation of 40 km distance as the most conservative approach for this catchment area.[184, 185] For the sake of completeness, under a narrower approach such as 30 km or even 20 km, the catchment area would not even give rise to an affected market. However, despite the relatively high shares, the Transaction does not give rise to concerns even under a delineation of 40 km, for the reasons set out below.

(153) *First,* neither Iberdrola nor BP will retain any ultra-fast public EV charging points on motorways in the Torrevieja catchment area post-Transaction but instead intend to contribute all of their existing ultra-fast public EV charging points on motorways to the JV. The share increment resulting from BP's contribution to the JV, i.e., [0-5] charging points, or a maximum of [5-10] percentage points (i.e., using the 40 km distance) depending on the geographic delineation retained, does not amount to a material change in the market structure.

183 The BP EV charging hub indicated as 'local market operator' in the map will be contributed to the JV.

184 The Parties' combined market shares would be identical when applying a geographic delineation of 50 km. The assessment below applies *mutatis mutandis* to the 50 km delineation.

185 This scenario is based on a definition of 'ultra-fast' charging as retained by the 2023 EV Charging Report (i.e., >150kW). Under the definition submitted by the Parties for 'ultra-fast' charging that would cover the range of ≥100kW, the Parties' combined market share would amount to [50-60]%. However, under both scenarios the market structure would not materially differ. The Commission will therefore use the more conservative definition for the purpose of this decision.

(154) *Second*, the JV will continue to face effective competitive pressure post-Transaction. Indeed, the market investigation confirmed the Notifying Parties' view that, post-Transaction, EV drivers will have a sufficient number of CPOs to choose from for charging their EVs, including the Torrevieja area.[186] For instance, one respondent indicated that '*in Spain the number of operators is high, and […] the current number of operators is more than enough, given the demand*', and '*there are currently a multitude of CPOs in Spain and new players are entering from other European countries*'.[187] Indeed, there are currently mainly two competing CPOs already active in the local area who will continue exerting competitive pressure over the JV post-Transaction.[188] These competitors include Tesla among others, whose ultra-fast public EV charging stations are strategically located on the main motorway between Alicante and Murcia, the main two main cities in the area, just like Iberdrola's charging hubs near Elche. By contrast, BP's La Coronelita fuel station near Torrevieja is not located on this axis.

(155) In this regard, the results of the market investigation confirmed that EV charging stations on the motorway that are located, for instance, at existing motorway service stations, important exits or intersections, high traffic routes, or at a certain distance or intervals between larger cities, are strategically well-located and, hence, have a higher likelihood of generating customer traffic.[189] As a result, EV drivers entering or leaving the broader Alicante area on motorways would have at least one alternative ultra-fast public EV charging station option from CPOs other than the Parties that is strategically well-located to serve their needs.

(156) *Third*, as explained above, the majority of the respondents to the market investigation that stated a view did not consider the Notifying Parties to be close competitors based on various parameters of competition.[190] The Commission notes that the current competitors Repsol and Tesla have both been ranked as significantly closer competitors to Iberdrola and, hence, the JV post-Transaction, than BP has been ranked relative to Iberdrola. Repsol, on the one hand, has been ranked by the majority of respondents to the market investigation having expressed a view as among the three strongest CPOs in Spain overall.[191] More specifically, Repsol has been indicated as one of the two strongest CPOs of on-motorway ultra-fast public EV charging stations in terms of on-site availability of amenities,[192] such as toilets, shops or cafés, or vending machines, which are regarded as important parameters of competition other than charging speed, availability and price.[193] Tesla, on the other hand, owning the largest ultra-fast EV charging network in the world, whose charging stations have traditionally been reserved exclusively to Tesla car drivers, announced in November 2021 its plans to gradually open its Spanish network to non-Tesla drivers.[194] As of 23 June 2023, 361 of Tesla's ultra-fast EV charging stations were available to non-Tesla drivers,

186 Responses to question D.A.A.1 of the eRFI.
187 Responses to question D.A.A.2 of the eRFI.
188 See Table 4 above.
189 Responses to question D.A.2 of the eRFI.
190 Responses to questions D.A.1 and D.A.A.3 of the eRFI.
191 Responses to question D.A.A.3 of the eRFI.
192 Responses to question D.A.1-2 of the eRFI.
193 Responses to question D.A.1-1 of the eRFI.
194 Form CO, paragraph 230.

including its supercharger hub in Murcia, which features 10 ultra-fast EV charging points.[195]

(157) *Fourth*, as set out at paragraph (146) above, the Spanish EV charging sector is still nascent and growing and current market positions may not provide a sufficiently clear indication of the structure of the market and of the competitive importance of the relevant market players in the foreseeable future, including in the Torrevieja area. Against this background, the Commission considers that potential entrants in the local area of Torrevieja (including the cities of Alicante, Elche and Murcia) will have a sufficient number of alternative locations available for the installation of future public EV charging stations, both at existing fuel stations not belonging to the BP network and at non-fuel station sites.[196] For the reasons set out at paragraph (147) above, expansion by current competitors in the Torrevieja area and/or entry by additional CPOs into the area appears sufficiently likely and timely to take place.

(158) Moreover, when considering the expected future deployment of additional public EV charging points at on-motorway fuel stations (both third parties' and BP's) within the Torrevieja area,[197] the JV's market shares are expected to decrease to approximately [20-30]% by the end of 2026,[198] as shown in Table 10 below.[199]

Table 10 - Parties' estimated future combined market share in the local area around Torrevieja (by end of 2026)

Undertaking	40 km	
	Public EV charging points	Market share
Joint Venture	[…]	[20-30]%
Iberdrola (retained)	[…]	[0-5]%
BP (retained)	[…]	[0-5]%
Combined	[…]	[20-30]%[200]
Others	[…]	[70-80]%
Total market	[…]	100%

Source: Form CO, Annex 15.

(159) *Fifth,* there are currently already a significant number of ultra-fast public EV charging stations operated by third-party CPOs off-motorway in the local area around Torrevieja. Despite not being located on the motorway, these are strategically located in proximity to motorway exit points to attract EV drivers from the motorway and, therefore, can be considered to exert additional

195 For Tesla's Murcia supercharger hub, see its website at https://www.tesla.com/en_eu/findus.

196 Form CO, paragraph 260 and Annexes 10 and 11.

197 Resulting in three charging points per fuel station on average as explained at section 5.2.1 above.

198 Given that this dynamic scenario disregards other sites, i.e. non-fuel station sites, at which rival CPOs could install additional ultra-fast public EV charging stations, the Commission considers it conservative or, at least, not overestimating rival CPOs likely future market position in the relevant local area.

199 Under this forward-looking scenario, the number of public EV charging points operated by the Parties and the JV in the Torrevieja area would not remain static, but take into account planned additional charging points also for the Parties/JV's sites, based on the Parties' pipeline data as of 1 June 2023; Form CO, Annex 8 – Methodology Note.

200 Corresponding to Scenario 8B, site BP_ES_EV_61678. See Form CO, Annex 15.

competitive (out-of-market) constraints over the JV post-Transaction.[201] Out of [20-30] additional ultra-fast public EV charging points put forward by the Parties as exerting such competitive constraint, at least [10-20] are located within less than 4 km from a motorway exit point in the relevant local area, which is well within EV drivers' willingness of driving '*up to five minutes*' as indicated by the majority of respondents to the market investigation.[202]

(160) Based on the above, the Commission concludes that despite the high current combined market share in the ultra-fast charging segment on-motorways within a 40 km (and 50 km) catchment area around the Parties' public EV charging stations nearby Torrevieja, the Transaction would not give rise to competition concerns as a result of horizontal effects in the relevant affected local area.

5.2.2.3.2. Ultra-fast off-motorway public EV charging stations

5.2.2.3.2.1. Alicante

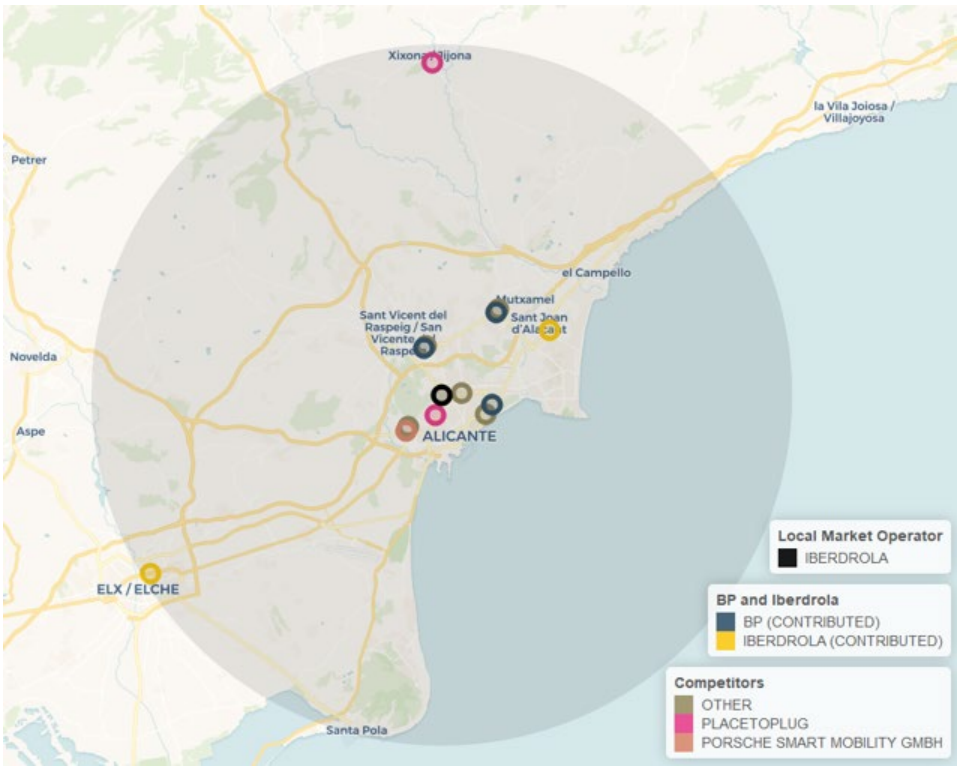
(161) In the city of Alicante, the Transaction would lead to combined market shares above 40% in the catchment area around Iberdrola's ultra-fast public EV charging pool at the intersection of Calle Teuleda/Calle de Confrides as the centroid, only if a radius for the catchment area of 20 km is considered. In this catchment area, the Parties are currently operating respectively 8 (Iberdrola) and 6 (BP) ultra-fast charging points, all of which will be contributed to the JV.

(162) The Commission notes at the outset that, as shown in Figure 5 below, […] ultra-fast public EV charging hubs in Alicante currently operated by Iberdrola and BP and to be contributed to the JV are located within close geographic proximity (less than 3 km crow-fly distance), creating one macro area at local level of largely overlapping centroids. Therefore, the effects of the Transaction around these [0-5] centroids will be assessed together as one catchment area.

201 Although it does not rule out that 'fast' public EV charging points strategically located in proximity to motorway exits could exert additional competitive (out-of-market) constraints, the Commission has not assessed such potential constraints for the purposes of this decision.

202 See paragraph (61) above. For off-motorway driving time and distance, the Commission assumes an average driving speed of 50 km/h, at which EV drivers would travel up to about 4 km from the motorway exit.

Figure 5 – Parties' and their competitors' geographic coverage in the local area (20 km) around the Parties' ultra-fast EV charging stations in Alicante[203]



Source: Response to Question4, RFI 10.

(163) As shown in Table 5 above, in the area of Alicante the Transaction would lead to combined market shares of up to [40-50]% in the ultra-fast charging segment off-motorways, when applying a radius of 20 km as the most conservative approach for this catchment area.[204] The Commission considers a delineation of 20 km to be the most conservative approach for this catchment area, because with a 10 km or 5 km delineation the combined market shares would be [30-40]% or up to [20-30]% respectively, whereas under an even narrower approach of 2.5 km, the catchment area would not give rise to an affected market. However, the Transaction does not give rise to concerns under any plausible geographic market definition including a delineation of a 20 km radius, for the reasons set out below.

(164) *First*, the market investigation confirmed the Notifying Parties' view that, post-Transaction, EV drivers will have a sufficient number of CPOs to choose from for charging their EVs in all areas of Spain, including the Alicante area.[205] Indeed, there are currently more than two competing CPOs active in the Alicante area who will continue exerting competitive pressure over the JV post-Transaction. These competitors include Placetoplug, Porsche Smart Mobility, and others, whose ultra-fast public EV charging stations are located in most cases in proximity to the Parties' EV charging stations, as shown in Figure 5 above.

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203 The Iberdrola EV charging hub indicated as 'local market operator' in the map will be contributed to the JV.

204 This scenario is based on a definition of 'ultra-fast' charging as submitted by the Parties, i.e., charging speeds of ≥100 kW. Under the definition retained by the 2023 EV Charging Report (i.e., >150 kW), the Parties' combined market share would remain below 40% (namely [30-40]%). The Commission will therefore use the more conservative definition for the purpose of this decision.

205 Responses to question D.A.A.1 of the eRFI.

(165) *Second,* against the background of the nascent and fast growing market for the installation, operation and maintenance of public EV charging stations in Spain, including in the Alicante area, the Commission considers that potential entrants in the local area of Alicante and its surrounding municipalities within the catchment area will have a sufficient number of alternative locations available for the installation of future public EV charging stations, both at existing fuel stations not belonging to the BP network and at non-fuel station sites.[206]

(166) Indeed, the large majority of respondents to the market investigation having stated a view consider that it would be viable for CPOs to focus their off-motorway public EV charging network on non-fuel station sites only.[207] Therefore, with access to fuel station forecourts not being critical for a competitively viable installation, operation and maintenance of public EV charging stations off-motorway, rival CPOs will be able to choose not only from non-BP branded fuel stations in and around Alicante, but also from numerous other (types of) locations, including public car parks and parking areas, train station forecourts, hotel parking lots and others.[208]

(167) For the reasons set out at paragraph (147) above, expansion by current competitors in the Alicante area and/or entry by additional CPOs into the area appears sufficiently likely and timely to take place.

(168) Moreover, when considering the expected future deployment of additional public EV charging points at off-motorway fuel stations (both third parties' and BP's) within the Alicante area,[209] the JV's market shares are expected to decrease to approximately [20-30]% by the end of 2026,[210] as shown in Table 11 below.[211]

206 Form CO, paragraph 260 and Annexes 10 and 11.

207 Responses to question D.A.A.4 of the eRFI.

208 Form CO, paragraph 277 and Annexes 10 and 11.

209 Resulting in three charging points per fuel station on average as explained at section 5.2.1 above.

210 Given that this dynamic scenario disregards other sites, i.e. non-fuel station sites, at which rival CPOs could install additional ultra-fast public EV charging stations, the Commission considers it conservative or, at least, not overestimating rival CPOs likely future market position in the relevant local area.

211 Under this forward-looking scenario, the number of public EV charging points operated by the Parties and the JV in the Torrevieja area would not remain static, but take into account planned additional charging points also for the Parties/JV's sites, based on the Parties' pipeline data as of 1 June 2023; Form CO, Annex 8 – Methodology Note.

Table 11 – Parties' estimated future combined market share in the local area around Alicante (by end of 2026)

Undertaking	20 km	
	Public EV charging points	Market share
Joint Venture	[…]	[20-30]%[212]
- Iberdrola (retained)	[…]	[0-5]%
- BP (retained)	[…]	[0-5]%
Combined	[…]	[20-30]%
Others	[…]	[70-80]%
Total market	[…]	100%

Source: Form CO, Annex 15.

(169) *Third*, the market investigation confirmed the Notifying Parties' view that in off-motorway local markets such as the one at issue, the time required to fully charge an EV is generally considered less relevant than in on-motorway local markets. Indeed, although the majority of respondents having stated a view indicated that from an EV driver's perspective, off-motorway public EV charging stations can be distinguished by charging speed,[213] a significant number of respondents, including from among those who indicated that off-motorway charging stations can be distinguished by charging speed, submitted that the degree to which EV drivers would consider fast chargers as possible substitutes for ultra-fast chargers off-motorway depends to a large degree on additional factors such as, for instance, the availability of ultra-fast chargers in the driver's vicinity, the actual difference in charging speed and the respective EV's maximum charging speed allowance,[214] as well as the context of charging (such as on-the-go vs. destination charging). In this regard, respondents stated for instance that for '*[p]ublic 'on-road' recharging, where drivers 'go to recharge': the ultimate purpose of drivers is to recharge […] they value the quality of the service, the availability and accessibility of recharging points and sufficient power so that recharging time is small, over other variables such as price […] recharging points with power over 50kW offer users sufficient recharging times to meet similar customer needs*'.[215] Other respondents stated that '*the variable is the demographic environment and the density/supply of chargers nearby. If there is a lot of supply, they are not interchangeable, you look for the one that gives you the most kW. If you have little, you adjust to the supply*', and that '*there is a difference between those who only want to recharge the car and those who are going to do some business and recharge the car in passing*'.[216] Based on the above, the Commission considers for the purposes of this decision that, at least, fast public EV charging stations constitute an out-of-market constraint for ultra-fast public EV charging stations.

212 Corresponding to Scenario 8D, site IB_ES_PIP_A-ALICANTE-035, see Form CO, Annex 15.

213 Responses to question C.A.A.17-1 of the eRFI.

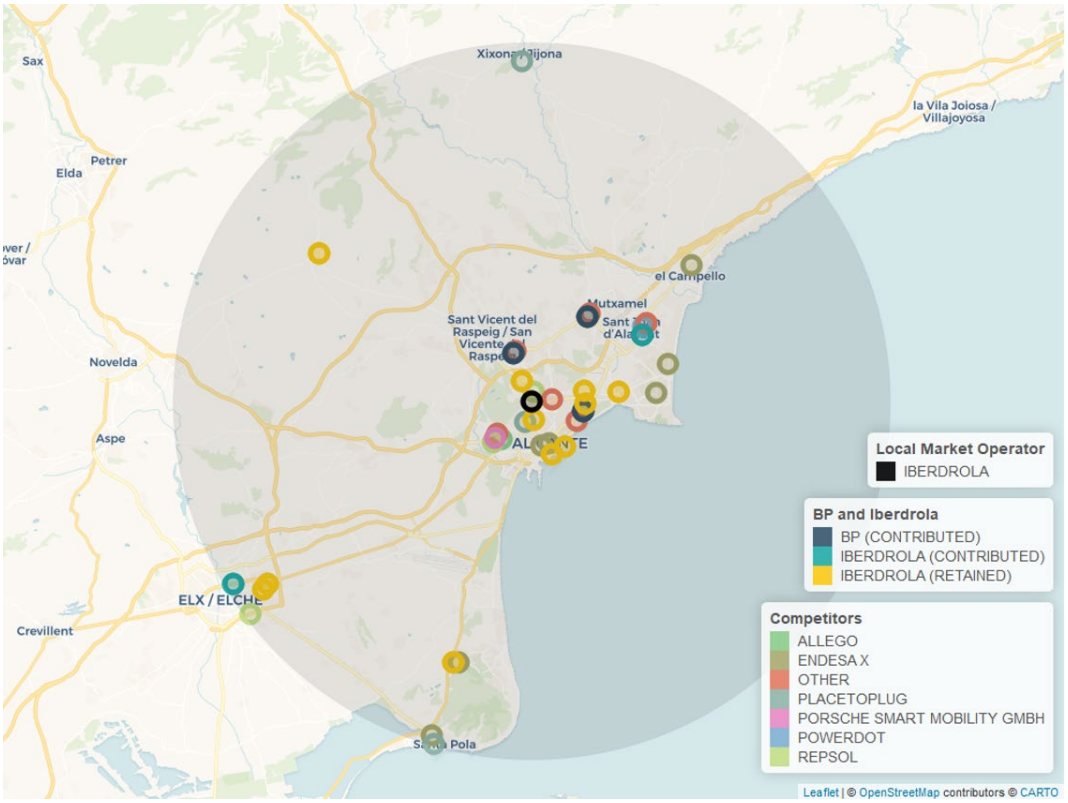
214 I.e., a difference between 50 and 100 kW is more likely interchangeable than a difference between 22 kW and >100 kW. Similarly, certain EV models do not allow for charging speeds above a certain threshold, although respondents to the market investigation having pointed to such limitations expect those to gradually disappear in the future; see responses to question C.A.A.17-3 of the eRFI.

215 Responses to question C.A.A.17-3 of the eRFI.

216 Responses to question C.A.A.17-3 of the eRFI.

(170) When considering such out-of-market constraint by fast public EV charging stations, the Parties will post-Transaction continue to face significant competitive constraint from numerous fast public EV charging stations in the relevant catchment area around Alicante, including competitors such as Endesa X Way, Repsol, Powerdot and Allego.[217] As shown in Figure 6 below, the Parties' ultra-fast EV charging stations are facing competitors' fast and/or ultra-fast charging stations at virtually every one of their sites.

Figure 6 – Parties' and their competitors' geographic coverage in the local area (20 km) around the Parties' ultra-fast EV charging stations in Alicante, including both fast and ultra-fast public EV charging stations[218]



Source: Response to RFI 9, question 3.

(171) Based on the above, the Commission concludes that despite the high current combined market share in the ultra-fast charging segment off-motorways within a 20 km catchment area around the Parties' public EV charging stations in and around Alicante, the Transaction would not give rise to competition concerns as a result of horizontal effects in the relevant affected local area.

5.2.2.3.2.2. Mutxamel

(172) Near the town of Mutxamel, a village in the Alicante area, the Transaction would lead to combined market shares above 40% in a catchment area around BP's ultra-fast public EV charging pool at Calle Ossa Major, in Tangel, as the centroid, with a radius for the catchment area of 5 km. In this catchment area, the Parties are currently operating respectively [0-5] (Iberdrola) and [0-5] (BP) ultra-fast charging points, all of which will be contributed to the JV. The location of the Parties' ultra-

217 Form CO, paragraph 279 and response to RFI 9, question 3.

218 The Iberdrola EV charging hub indicated as 'local market operator' in the map will be contributed to the JV.

fast public EV charging stations in the Mutxamel catchment area is shown in Figure 7 below.

Figure 7 – Parties' and their competitors' geographic coverage in the local area (5 km) around the Parties' ultra-fast EV charging stations in Mutxamel[219]

Source: Response to RFI 10, question 4.

(173) As shown in Table 6 above, in the area of Mutxamel the Transaction would lead to combined market shares of [60-70]% in the ultra-fast charging segment off-motorways, when applying a radius of 5 km as the most conservative approach for this catchment area.[220] The Commission considers a delineation of 5 km to be the most conservative approach for this catchment area, because using a 10 km or 20 km radius the combined market shares would amount to [30-40]% respectively, whereas under an even narrower approach of 2.5 km, the catchment area would not give rise to an affected market. However, the Transaction does not give rise to concerns under any plausible geographic market definition including a delineation of a 5 km radius, for the reasons set out below.

(174) *First*, as confirmed by the results of the market investigation, post-Transaction, EV drivers will have a sufficient number of CPOs to choose from for charging their EVs in all areas of Spain, including the Alicante area in which Mutxamel is located.[221] Indeed, there is currently at least one competing CPO active in the local

219 The BP EV charging hub indicated as 'local market operator' in the map will be contributed to the JV.

220 This scenario is based on a definition of 'ultra-fast' charging as submitted by the Parties, i.e., charging speeds of ≥100 kW. Following the definition retained by the 2023 EV Charging Report (i.e., >150 kW), the Parties' combined market share would be identical.

221 Responses to question D.A.A.1 of the eRFI.

Mutxamel area with a share of [40-50]%, who will continue exerting competitive pressure over the JV post-Transaction.[222]

(175) *Second*, against the background of the nascent and fast growing market for the installation, operation and maintenance of public EV charging stations in Spain, including in the broader Alicante area, the Commission considers that potential entrants in the local area of Mutxamel will have a sufficient number of alternative locations available for the installation of future public EV charging stations, both at existing fuel stations not belonging to the BP network and at non-fuel station sites including undeveloped land.[223] As set out at paragraph (84) above, the large majority of respondents to the market investigation having stated a view confirmed that access to fuel station forecourts was not critical for a competitively viable installation, operation and maintenance of public EV charging stations off-motorway.[224] Therefore, and for the reasons set out at paragraph (147) above, entry into the Mutxamel area by current competitors in the broader Alicante area and/or entry by additional CPOs appears sufficiently likely and timely to take place.

(176) Moreover, when considering the expected future deployment of additional public EV charging points at off-motorway fuel stations (both third parties' and BP's) within the Mutxamel catchment area,[225] the JV's market shares are expected to decrease to approximately [20-30]% by the end of 2026,[226] as shown in Table 12 below.

Table 12 – Parties' estimated future combined market share in the local area around Mutxamel (by end of 2026)

Undertaking	5 km	
	Public EV charging points	Market share
Joint Venture	[…]	[20-30]%[227]
- Iberdrola (retained)	[…]	[0-5]%
- BP (retained)	[…]	[0-5]%
Combined	[…]	[20-30]%
Others	[…]	[70-80]%
Total market	[…]	100%

Source: Form CO, Annex 15

(177) *Third*, as set out at paragraph (169) above, the market investigation confirmed the Notifying Parties' view that in off-motorway local markets such as the one at issue, the time required to fully charge an EV is generally considered less relevant than in on-motorway local markets,[228] leading to out-of-market constraints upon ultra-fast

222 Response to RFI 10, question 1.
223 Form CO, Annexes 10 and 11.
224 Responses to question D.A.A.4 of the eRFI.
225 Resulting in three charging points per fuel station on average as explained at section 5.2.1 above.
226 Given that this dynamic scenario disregards other sites, i.e. non-fuel station sites, at which rival CPOs could install additional ultra-fast public EV charging stations, the Commission considers it conservative or, at least, not overestimating rival CPOs likely future market position in the relevant local area.
227 Corresponding to Scenario 14C, site BP_ES_EV_61423, see Form CO, Annex 15.
228 Responses to question C.A.A.17 of the eRFI.

public EV charging stations, at least, from fast public EV charging stations in the same catchment area, in particular when taking into account the expected market growth in the coming years, which is expected indistinctively for all charging speed categories.

(178) Based on the above, the Commission concludes that despite the high current combined market share in the ultra-fast charging segment off-motorways within a 5 km catchment area around BP's public EV charging station in Mutxamel, the Transaction would not give rise to competition concerns as a result of horizontal effects in the relevant affected local area.

5.2.2.3.2.3. San Juan-de-Alicante

(179) In the town of San Juan-de-Alicante, a village in the Alicante area, the Transaction would lead to combined market shares above 40% in a catchment area around Iberdrola's ultra-fast public EV charging pool on Av. de Miguel Hernandez as the centroid, with a radius for the catchment area of 5 km. In this catchment area, the Parties are currently operating respectively [0-5] (Iberdrola) and [0-5] (BP) ultra-fast charging points, all of which will be contributed to the JV. The location of the Parties' ultra-fast public EV charging stations in the San Juan-de-Alicante catchment area is shown in Figure 8 below.

Figure 8 – Parties' and their competitors' geographic coverage in the local area (5 km) around the Parties' ultra-fast EV charging stations in San Juan-de-Alicante[229]

Source: Response to RFI 10, question 4.

(180) As shown in Table 7 above, in the area of San Juan-de-Alicante the Transaction would lead to combined market shares of [60-70]% in the ultra-fast charging segment off-motorways, when applying a radius of 5 km as the most conservative

229 The Iberdrola EV charging hub indicated as 'local market operator' in the map will be contributed to the JV.

approach for this catchment area.[230] The Commission considers a delineation of 5 km to be the most conservative approach for this catchment area, because under a 10 km or 20 km radius the combined market shares would amount to [30-40]% and [30-40]% respectively, whereas under an even narrower approach of 2.5 km, the catchment area would not give rise to an affected market. However, the Transaction does not give rise to concerns under any plausible geographic market definition including a delineation of a 5 km radius, for the reasons set out below.

(181) *First*, as confirmed by the results of the market investigation, post-Transaction, EV drivers will have a sufficient number of CPOs to choose from for charging their EVs in all areas of Spain, including the Alicante area in which San Juan-de-Alicante is located.[231] There is currently one competing CPO active in the local Mutxamel area, with a market share of [30-40]% (i.e., [0-5] out of [5-10] ultra-fast public EV charging points) who will continue exerting competitive pressure over the JV post-Transaction.[232]

(182) *Second*, against the background of the nascent and fast growing market for the installation, operation and maintenance of public EV charging stations in Spain, including in the broader Alicante area, the Commission considers that potential entrants in the local area of San Juan-de-Alicante will have a sufficient number of alternative locations available for the installation of future public EV charging stations, both at existing fuel stations not belonging to the BP network and at non-fuel station sites including undeveloped land.[233] As set out at paragraph (84) above, the large majority of respondents to the market investigation having stated a view confirmed that access to fuel station forecourts was not critical for a competitively viable installation, operation and maintenance of public EV charging stations off-motorway.[234] Therefore, and for the reasons set out at paragraph (147) above, entry into the San Juan-de-Alicante area by current competitors in the broader Alicante area and/or entry by additional CPOs appears sufficiently likely and timely to take place.

(183) Moreover, when considering the expected future deployment of additional public EV charging points at off-motorway fuel stations (both third parties' and BP's) within the San Juan-de-Alicante catchment area,[235] the JV's market shares are expected to decrease to approximately [20-30]% by the end of 2026,[236] as shown in Table 13 below.

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230 This scenario is based on a definition of 'ultra-fast' charging as submitted by the Parties, i.e., charging speeds of ≥100 kW. Following the definition retained by the 2023 EV Charging Report (i.e., >150 kW), the Parties' combined market share would be identical.

231 Responses to question D.A.A.1 of the eRFI.

232 Response to RFI 10, question 1.

233 Form CO, Annexes 10 and 11.

234 Responses to question D.A.A.4 of the eRFI.

235 Resulting in three charging points per fuel station on average as explained at section 5.2.1 above.

236 Given that this dynamic scenario disregards other sites, i.e. non-fuel station sites, at which rival CPOs could install additional ultra-fast public EV charging stations, the Commission considers it conservative or, at least, not overestimating rival CPOs likely future market position in the relevant local area.

Table 13 – Parties' estimated future combined market share in the local area around San Juan-de-Alicante (by end of 2026)

Undertaking	5 km	
	Public EV charging points	Market share
Joint Venture	[…]	[20-30]%[237]
- Iberdrola (retained)	[…]	[0-5]%
- BP (retained)	[…]	[0-5]%
Combined	[…]	[20-30]%
Others	[…]	[70-80]%
Total market	[…]	100%

Source: Form CO, Annex 15.

(184) *Third*, as set out at paragraph (169) above, the market investigation confirmed the Notifying Parties' view that in off-motorway local markets such as the one at issue, the time required to fully charge an EV is generally considered less relevant than in on-motorway local markets,[238] leading to out-of-market constraints upon ultra-fast public EV charging stations, at least, from fast public EV charging stations in the same catchment area. Taking into account such out-of-market constraints, the Parties will continue to face competitive pressure also from Endesa X Way and Powerdot, who operate four fast public EV charging hubs in San Juan-de-Alicante, as shown in Figure 9 below.

[237] Corresponding to Scenario 14C, site IB_ES_OWN_A-SANJUANDEALICANTE-008, see Form CO, Annex 15.

[238] Responses to question C.A.A.17 of the eRFI.

Figure 9 – Parties' and their competitors' geographic coverage in the local area (5 km) around the Parties' ultra-fast EV charging stations in San Juan-de-Alicante, including both fast and ultra-fast public EV charging stations[239]

Source: Response to RFI 9, question 3.

(185) Based on the above, the Commission concludes that despite the high current combined market share in the ultra-fast charging segment off-motorways within a 5 km catchment area around Iberdrola's public EV charging station in San Juan-de-Alicante, the Transaction would not give rise to competition concerns as a result of horizontal non-coordinated effects in the relevant affected local area.

5.2.2.3.3. Dynamic assessment

(186) As set out above at recitals (146) et seq., the Spanish EV charging sector is nascent and growing. The Commission therefore considers it appropriate to assess the Transaction also taking into account the trend or likely evolution of the relevant market in the foreseeable future.

(187) On this basis, as shown in Table 14 below, based on the number of public EV charging stations expected to be operational by the end of 2026, i.e., the moment when all the Parties' pipeline assets as of 1 June 2023 are expected to be deployed and fully operational, the Transaction is projected to give rise (i) on-motorway, for fast public EV charging stations to 16 local areas with combined shares above 20% under the narrowest definition of 30 km, whereby 1 would exceed 40% of combined share, (ii) on-motorway, for ultra-fast public EV charging stations to 72 local areas with combined shares above 20% under the narrowest definition of 30 km, whereby 6 would exceed 40% and 1 would exceed 50%, (iii) off-motorway,

239 The Iberdrola EV charging hub indicated as 'local market operator' in the map will be contributed to the JV.

for fast public EV charging stations to 44 local areas with combined shares above 20% under the narrowest definition of 2.5 km, whereby 11 would exceed 40% of combined market share and 2 would exceed 50%, (iv) off-motorway, for ultra-fast public EV charging stations to 55 local areas with combined shares above 20% under the narrowest definition of 2.5 km, whereby 18 would exceed 40% of combined market share and 12 would exceed 50%.

Table 14 – Summary of the number of local catchment areas where the Parties' combined share exceeds 20% based on segmentation by location and charging power output in Spain (forward-looking scenario for 2026)[240]

Location	Power output ('charging speed')	Catchment area	Number of affected local areas	Number of local areas with combined market shares ≥40%	Number of local areas with combined market shares ≥50%
On-Motorway	Fast (22-100kW)	30km	[…]	[0-5]	[0-5]
		40km	[…]	[0-5]	[0-5]
		50km	[…]	[0-5]	[0-5]
	Ultra-fast (≥100kW)	30km	[…]	[5-10]	[0-5]
		40km	[…]	[0-5]	[0-5]
		50km	[…]	[0-5]	[0-5]
Off-Motorway	Fast (22-100kW)	2.5km	[…]	[10-20]	[0-5]
		5km	[…]	[5-10]	[0-5]
		20km	[…]	[0-5]	[0-5]
	Ultra-fast (≥100kW)	2.5km	[…]	[10-20]	[10-20]
		5km	[…]	[5-10]	[0-5]
		20km	[…]	[0-5]	[0-5]

Source: FCO, Annex 15.

(188) The Commission considers that the Transaction would not give rise to competition concerns as a result of future horizontal non-coordinated effects in any of the local catchment areas where the Parties' combined shares exceed 20%, due, among others, to the following considerations.

(189) *First*, there is inherently a high degree of uncertainty when it comes to estimating the future growth of EV charging points, and the forward-looking assessment is based on future estimated market shares provided by the Notifying Parties based on conservative assumptions. In particular, the future estimated market shares only include charging points at fuel stations, due to data limitations relating to potential non-fuel stations sites. They therefore are likely to over-estimate the combined market shares of the Parties because, by assuming that public EV charging points will only be installed at fuel station sites, other plausible locations such as parking lots, restaurants, shopping malls, stadiums or on-street locations more generally are excluded. Contrary to that assumption, the Commission considers that the Parties'

240 Based on the Parties' market shares for the forward-looking scenario, using the following parameters: 3 CP assumption, 500 m width band, Parties' charging speed classification, and BP's actual data. The Commission considers these parameters reasonable and in line with the evidence used in the static assessment.

future public EV charging stations do and will compete with charging stations at many other (i.e., non-fuel station) locations in the locally affected catchment areas.[241] The above considerations apply in particular for off-motorway locations, where non-fuel station sites are more easily accessible.

(190) *Second*, the Parties' future public EV charging stations will continue to face significant out-of-market constraints. On-motorway stations remain constrained by numerous off-motorway stations that are strategically located to serve EV drivers on the respective motorway, at least as long as, and to the extent that, EV drivers may consider on-motorway alternatives as being insufficient to meet their needs. Indeed, the results of the market investigation indicate that EV drivers would compensate for any perceived insufficiencies of on-motorway EV charging stations, for instance in terms of availability or charging speed, by choosing to use off-motorway EV charging stations in their vicinity.[242]

(191) In addition, in off-motorway situations the time required to fully charge an EV is generally considered less relevant than in on-motorway situations, leading to even greater out-of-market constraints by providers of fast public EV charging stations.[243] The Commission therefore considers the forward-looking market share estimates for off-motorway catchment areas as an insufficient proxy for future market positions.

(192) *Third*, the Commission notes that there is a large number of credible competitors that are expected to enter or expand in the market, such as energy companies Repsol, Endesa, EDP, and Naturgy, 'EV natives' such as Tesla, Wenea, Zunder, Ionity and PowerDot, fuel station networks including Shell, Cepsa and Galp, and vehicle OEMs.[244] In response to the market investigation, eleven market participants provided summary figures for their current plans ranging from around 400 to 3,000 additional public EV charging points by the end of 2026, i.e., an average of almost 1,000 additional charging points per respondent who stated a view.[245]

(193) *Fourth*, the Commission notes that, in response to the market investigation, none of the market participants raised concerns regarding the foreseeable evolution of the

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241 The Commission notes that the Notifying Parties equally apply the 3 CP assumption also to all BP stations for which BP does not currently have plans (including plans not to build any public EV charging station).

242 Responses to question D.A.4 of the eRFI, where the large majority of respondents having stated a view expect that once public EV charging infrastructure on motorways is as widely available as fuelling infrastructure, EV drivers may no longer be willing to quit the motorway for recharging; *e contrario*, as long as this is not the case, out-of-market constraints from off-motorway charging stations are expected to provide a viable alternative.

243 Responses to question C.A.A.17 of the eRFI.

244 Examples of the development plans of some of these competitors include: (i) Repsol (the leading fuel stations operator in Spain) plans to have fast and ultra-fast EV charging stations every 50 kms on the main road corridors in Spain and Portugal and has agreements with Kia Motors and the transport company SEUR; (ii) Endesa (a leading energy company, already with a strong presences in the EV sector) has a partnership with Cepsa (the second largest operator of fuel stations in Spain) to develop a public network of ultra-fast EV charging stations in Spain and Portugal. See Form CO, paragraph 230.

245 Responses to question D.A.A.6-3 of the eRFI.

market for the installation, operation and maintenance of public EV charging stations as a result specifically of the Transaction.[246]

(194) Based on the above, the Commission concludes that despite projections that there may be a larger number of locally affected catchment areas and that the estimated combined market shares of the Parties may be relatively high in some of them, the Transaction would not give rise to competition concerns as a result of horizontal non-coordinated effects in any relevant locally affected catchment area in the foreseeable future (i.e., by the end of 2026).

5.2.3. Portugal

(195) In relation to the installation, operation and maintenance of public EV charging stations in Portugal, as of 1 June 2023:

(a) Iberdrola was operating a total of [110-150] public EV charging points;

(b) BP [BP's asset development plans].[247]

(196) Iberdrola will contribute only [0-5] public EV charging station in Matosinhos (with [0-5] charging points) to the JV. BP will contribute the [0-5] public EV charging station [BP's asset development plans].[248]

5.2.3.1. No horizontally affected market at national level

(197) The Notifying Parties provided estimates for market shares in terms of the number of public EV charging points in Portugal, based on those in operation as of 1 June 2023. According to these estimates, the combined share of the Parties would not exceed 20% at national level in the overall market for the installation, operation and maintenance of public EV charging stations in Portugal (their combined market share would be approximately [0-5]%)[249] or in any plausible segmentation of that market.[250]

(198) Therefore, the Transaction does not give rise to an affected market at national level under any plausible product market segmentation in Portugal.

5.2.3.2. Local level

(199) At the local level, currently and, therefore, immediately post-Transaction there would be no horizontal overlap since the [0-5] public EV charging stations to be

246 Responses to questions E.2 and E.A.1 of the eRFI. Concerns voiced by respondents to the market investigation primarily relate to (i) Iberdrola's activity as a distribution network operator ('DSO') in large parts of Spain, which could grant it preferential access to key information about suitable network capacity and rival CPOs' plans for installations, potentially providing Iberdrola with better investment planning capabilities, and (ii) Iberdrola's current access and pricing policy vis-à-vis third-party eMSPs regarding access to Iberdrola's public EV charging network, which is considered by some respondents as unfair or discriminatory at current. However, while the first concern is not merger-specific, because CPOs do not contract directly with DSOs for the sourcing of their electricity needs (instead, CPOs contract with electricity retail suppliers who rely on DSOs for the distribution of electricity from the generation sources to their final customers), the second is not supported by the broader results of the market investigation, as set out at Section 5.3.1 below.

247 Form CO, paragraphs 349, 353, 363 and Table 48.

248 Form CO, paragraphs 349 and 363.

249 Form CO, Table 50.

250 Form CO, Table 50.1.

contributed to the JV (Iberdrola's station in Matosinhos and BP's station in [local area]) are located more than 300 km away one from each other.[251]

(200) Only under a future-looking, dynamic assessment of the market structure based on the number of public EV charging stations expected to be operating by the end of 2026, as discussed in relation to Spain, the Transaction would lead, at the most depending on the parameters used, to only 27 locally affected catchment areas in Portugal in relation to the installation, operation and maintenance of ultra-fast public EV charging stations located off-motorway. For fast public EV charging stations located off-motorway, the Transaction would lead to 7[252] locally affected catchment areas. However, in all these 27 locally affected catchment areas, the projected combined market share of the Parties would remain between 20% and 30%.[253] Under different scenarios (with different combinations of parameters e.g., under different radii) the Transaction would give rise to fewer locally affected catchment areas, but where the projected combined market share of the Parties would reach up to a maximum of [30-40]%. These occur mostly in catchment areas of 2.5 km off-motorway. As explained in paragraph (189) above, the Commission considers however that the future estimated market shares are likely to over-estimate the combined market shares of the Parties because they only include charging points at fuel stations, while off-motorway stations will compete with EV charging points from many other locations.

(201) In each of those locally affected catchment areas the Parties face competitors, including some of the following: Galp, KLC, EDP, Powerdot, Repsol, Tesla, Etecnic, and a large number of other CPOs.[254] Moreover, as explained in paragraph (169) off-motorway ultra-fast public EV charging stations would be constrained by fast public EV charging stations in the same catchment area.

(202) A large majority of respondents to the market investigation who gave a view stated that:

(a) the Transaction would have a positive or neutral impact on the installation, operation and maintenance of public EV charging stations in Portugal;[255]

(b) post-Transaction EV drivers will have a sufficient number of operators to choose from for charging their EVs in all areas of Portugal;[256]

(203) For example, two respondents to the market investigation stated, respectively, that '[t]*here are currently many CPOs active in Portugal serving EV drivers*', and that '[t]*he network is growing fast*' and '[t]*he evolution of the Portuguese EV charging market has led to the entry of multiple operators, ensuring healthy competition and providing drivers with a variety of options*'.[257]

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251 Form CO, paragraph 354.

252 Under the segmentations followed above, 500 width band, 3 CP assumption, Parties' charging speed classification and BP actual data.

253 Form CO, paragraph 356.

254 Form CO, Table 50. To give an indication of the relative importance of each of those competitors in Portugal, their market shares (as of 1 June 2023) at the national level for the installation, operation and maintenance of public EV charging stations are Galp 17.1%, KLC 15.6%, EDP 14.6%, Powerdot 12.2%, Repsol 3.3%, Tesla 3.1%, and Etecnic 3%.

255 Responses to question E.B.1 of the eRFI.

256 Responses to question D.A.B.1 of the eRFI.

257 Responses to question D.A.B.2 of the eRFI.

(204) Based on the above, the Commission considers that the Transaction is unlikely to give rise to horizontal non-coordinated effects that would significantly impede effective competition in any market for the installation, operation and maintenance of public EV charging stations in Portugal.

5.3. Non-horizontal effects

(205) According to the Non-Horizontal Merger Guidelines, foreclosure effects may occur where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the concentration, thereby reducing these companies' ability and/or incentive to compete.[258]

(206) In the case at hand, vertically affected markets only arise when considering the JV's activities in the market for the installation, operation, and maintenance of public EV charging stations at local level in Spain.

(207) The Transaction results in the following vertical relationships between: [259]

a) the upstream market for the installation, operation, and maintenance of public EV charging stations at local level, where Iberdrola is, and the JV will be, active, and the downstream market for the provision of e-mobility services, where Iberdrola is active and BP will be active in the future;

b) the upstream market for the retail supply of electricity, where Iberdrola is active, and the downstream market for the installation, operation, and maintenance of public EV charging stations at local level, where Iberdrola is, and the JV will be, active;

c) the upstream market for the ownership or operation of land and sites suitable for EV charging stations, where BP is active, and the downstream market for the installation, operation, and maintenance of public EV charging stations at local level, where Iberdrola is, and the JV will, be active.

5.3.1. The vertical relationship between the market for the installation, operation, and maintenance of public EV charging stations (upstream) and the market for the provision of e-mobility services (downstream) does not raise competition concerns

Input foreclosure

5.3.1.1. The Notifying Parties' view

(208) The Notifying Parties submit that the JV would not have the ability or the incentive to foreclose the Notifying Parties' competitors in the market for the provision of e-mobility services. Further, the Notifying Parties consider that such foreclosure strategies would not result in anti-competitive effects.

(209) In relation to the lack of ability to foreclose third-party eMSPs, the Notifying Parties claim that: (i) the JV will not have a sufficient degree of market power in

258 Non-Horizontal Merger Guidelines, para. 81.

259 The vertical relationships arise on a national level and for each overall market without further segmentation. This is so because procurement of all relevant inputs is done at the overall level without differentiating between the plausible segments.

the market for the installation, operation, and maintenance of public EV charging stations to foreclose eMSPs; and (ii) eMSPs will continue to have numerous CPOs other than the JV as alternative suppliers.[260]

(210) In relation to the lack of incentive to foreclose third-party eMSPs, the Notifying Parties claim that: (i) any input foreclosure strategy would not be profitable; and (ii) the ownership and corporate governance structure of the JV would render any foreclosure strategy difficult to implement because BP – who would need to approve such a foreclosure strategy – is not active in the eMSP space and would have nothing to gain from such strategy.[261]

(211) In relation to the lack of anti-competitive effects, the Notifying Parties claim that if the JV were to deter other e-MSPs from accessing the JV's public EV charging station network, third-party e-MSPs would simply switch to other alternative CPOs, counteracting the JV's behaviour.[262]

5.3.1.2. The Commission's assessment

(212) The Commission notes that the JV's market share in the national market for the installation, operation, and maintenance of public EV charging stations in Spain amounted to [0-5]%[263] in 2023 potentially increasing to [0-5]%[264] in a foreseeable future (by 2026).[265] If the retained stations by Iberdrola and BP are considered, the combined market share of the JV and the Parties in this space would amount to [10-20]% and [10-20]% in a foreseeable future (by 2026).

(213) The Commission also notes that, at local level, there are a number of affected markets as explained in Section 5.2.2 above. The market investigation results indicate that the downstream market for e-mobility services is likely to be national, given that eMSPs tend to provide a unified nation-wide offer and pricing policy.[266] Consequently, for the JV to have the ability to foreclose Iberdrola's competitors in the downstream market for the provision of e-mobility services, the foreclosure strategy would have to be applied throughout the national territory. Given that the affected local areas are limited in number, a nation-wide foreclosure strategy is unlikely.

(214) Further, according to the results of the market investigation, 53% of total respondents (and 81% of respondents who expressed an opinion) indicated that, post-Transaction, there will continue to be a sufficiently large number of CPOs to choose from.[267] There are a number of alternative CPOs operating in Spain, namely: Endesa, Tesla, Repsol, Cepsa, Zunder, Wenea, EDP, Acciona, and Ionity who together account for [90-100]% of all public EV charging stations in Spain.[268]

260 Form CO, paragraphs 402-404.
261 Form CO, paragraphs 405-409.
262 Form CO, paragraphs 410-412.
263 Form CO, Table 8.
264 Form CO, Table 47.
265 Form CO, paragraph 402.
266 Non-confidential response to questions C.B.B.1 and C.B.B.3 of the eRFI.
267 Non-confidential response to question D.A.A.1 of the eRFI.
268 Form CO, paragraph 404.

(215) As mentioned above in Section 5.2 (e.g., paragraph 146), the market for the installation, operation, and maintenance of public EV charging stations in Spain is expected to continue growing in the upcoming years.

(216) The Commission therefore considers that the JV will lack the ability to engage in any input foreclosure strategies affecting eMSPs competing with Iberdrola in the downstream market. Specifically, the JV does not have a sufficient degree of market power in the upstream national market to engage in input foreclosure strategies at a national level. Even from a forward-looking perspective, at a local level, the JV's market share[269] (i) for on-motorway, will exceed 30% in 17 catchment areas[270], (ii) for off-motorway, will exceed 30% in 50 catchment areas[271] (see Table 14 above). The JV's position on the market will be insufficient for the JV to be able to implement an input foreclosure strategy at national level. Against this background, it is not necessary to assess whether the JV would have the incentive to engage in such strategies or if such hypothetical foreclosure strategy could have a significant detrimental effect on competition.

Customer foreclosure

5.3.1.3. The Notifying Parties' view

(217) The Notifying Parties submit that Iberdrola, as an eMSP, will have neither the ability nor the incentive to foreclose Iberdrola's and the JV's competitors in the upstream market. Further, the Notifying Parties consider that such foreclosure strategy would not result in anticompetitive effects.

(218) In relation to the lack of ability to foreclose third-party CPOs, the Notifying Parties submit that Iberdrola, acting as an eMSP, does not constitute an important customer for CPOs.[272] Specifically, the Notifying Parties indicate that (i) Iberdrola's market share in the provision of e-mobility services in 2022 is approximately [20-30]%; (ii) approximately [0-5]% of the charges made through Iberdrola's e-mobility solution are done at public EV charging stations operated by third-party CPOs, while the remaining [90-100]% of charges are done at the public EV charging stations that Iberdrola operates and maintains; [273] and (iii) the provision of e-mobility services is characterised by a strong presence of multi-homing practices, which dilutes any potential consideration of the Parties being, in their capacity as eMSPs, important customers for CPOs.[274]

(219) In relation to lack of incentive to foreclose third-party CPOs, the Notifying Parties indicate that any foreclosure strategy would be unprofitable. Specifically, according to the Notifying Parties, the presence of the JV is and (will be) negligible in the market for the installation, operation and maintenance of EV charging

269 When applying the 3 CP assumption, 500 m width band, BP's actual data, and the Parties' charging speed classification.

270 Under the narrowest definition of 30 km, of which 15 fall under the ultra-fast segmentation and 2 under the fast segmentation.

271 Under the narrowest definition of 2.5 km, of which respectively 25 fall under each of the ultra-fast and fast segmentations.

272 Form CO, paragraph 414.

273 *Ibid.*

274 Form CO, paragraph 415.

stations at national level and, as a result, limiting Iberdrola eMSP's offering to just the JV would be counterproductive.[275]

(220) In relation to the lack of anti-competitive effects, the Notifying Parties claim that any potential foreclosure conduct against the JV's competitors upstream would have negligible effects considering Iberdrola's limited presence in the provision of e-mobility services in Spain.

5.3.1.4. The Commission's assessment

(221) Based on the relatively low market share and on the even lower third-party CPO exposure to Iberdrola's e-mobility solution, the Commission considers that it is unlikely that Iberdrola would have the ability or the incentive to deprive other CPOs of a substantial share of their sales by removing Iberdrola's e-mobility solution as a customer.

5.3.2. The vertical relationship between the market for the retail supply of electricity (upstream) and the market for the installation, operation, and maintenance of public EV charging stations (downstream) does not raise competition concerns

Customer foreclosure

5.3.2.1. The Notifying Parties' view

(222) The Notifying Parties submit that Iberdrola and the JV will have neither the ability nor the incentive to foreclose Iberdrola's competitors in the market for the retail supply of electricity. Further, the Notifying Parties consider that such foreclosure strategies would not result in anticompetitive effects. [276]

(223) In relation to the lack of ability to foreclose third-party electricity retailers, the Notifying Parties submit that the public EV charging stations operated by the JV will not constitute an important customer for competing retail electricity suppliers.[277]

(224) In relation to the incentives of the JV, the Notifying Parties submit that – because Iberdrola will be the exclusive supplier of electricity to the JV's public EV charging stations – it is not necessary to assess hypothetical incentives of the JV not to source electricity from third-party electricity retailers.[278]

(225) In relation to the lack of anticompetitive effects, the Notifying Parties submit that the vast majority of public EV charging stations that will be contributed to the JV are already customers of Iberdrola. As a result, third-party retailers would not be at risk of losing the JV as a customer.[279]

5.3.2.2. The Commission's assessment

(226) The Commission notes that, according to the Notifying Parties' knowledge of the industry, approximately 99.9% of electricity companies' turnover is generated

275 Form CO, paragraph 418.
276 Form CO, paragraph 427.
277 Form CO, paragraphs 440-441.
278 Form CO, paragraph 439.
279 Form CO, paragraph 442.

through the supply of electricity to customers unrelated to the installation, operation, and maintenance of public EV charging stations.[280] Even if the estimate of the Notifying Parties were to be excessive, the Commission considers that it is likely that only a small percentage of electricity companies' turnover relies on CPOs. As a consequence, the Commission considers that it is unlikely that the public EV charging stations operated by the JV – even if the charging stations retained by Iberdrola are taken into account – can represent an important customer to retail electricity suppliers in Spain.

(227) Further, the vast majority ([90-100]%) of the public EV charging stations that will be contributed to the JV are already customers of Iberdrola.[281] As a result, any potential impact of the Transaction on Iberdrola's competing retail electricity suppliers would be insignificant and, in any event, lack merger-specificity.

(228) The Commission therefore considers that the JV will lack the ability to engage in any customer foreclosure strategies affecting retail electricity suppliers competing with Iberdrola in the upstream market. Specifically, the JV cannot be considered as a sufficiently relevant customer of retail suppliers of electricity that would allow the JV to engage in customer foreclosure strategies. Even from a forward-looking perspective, the market share of the JV will continue to be limited in the market for the installation, operation, and maintenance of public EV charging stations: (i) for on-motorway will exceed 30% in 6[282] catchment areas, and 40% in 1 catchment area and for (ii) off-motorway will exceed 30% in 19[283] catchment areas, and 40% in 6 catchment areas. Against this background, it is not necessary to assess whether the JV would have the incentive to engage in such strategies or if such hypothetical foreclosure strategy could have a significant detrimental effect on competition.

Input foreclosure

5.3.2.3. The Notifying Parties' view

(229) The Notifying Parties submit that Iberdrola, as a supplier of retail electricity, will have neither the ability nor the incentive to foreclose third-party CPOs active in the downstream market. Further, the Notifying Parties consider that such foreclosure strategies would not result in anticompetitive effects.

(230) In relation to the lack of ability to foreclose third-party CPOs, the Notifying Parties indicate: (i) that Iberdrola does not have a significant degree of market power in the retail supply of electricity, given that its market share at the national level amount to [20-30]%; and (ii) competing CPOs would have a wide range of alternative electricity suppliers to procure electricity from.[284]

(231) In relation to the lack of incentive to foreclose third-party CPOs, the Notifying Parties indicate that any input foreclosure would be unprofitable, as CPOs would simply turn to other electricity suppliers.[285]

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280 Form CO, paragraph 441.

281 Form CO, paragraph 442.

282 When applying 3 CP assumption, 500 m width band, BP's actual data, Parties charging speed Classification and 40 km radius.

283 When applying 3 CP assumption, 500 m width band, BP's actual data, Parties charging speed Classification and 5 km radius.

284 Form CO, paragraphs 434 and 435.

285 Form CO, paragraph 436.

(232) In relation to the lack of anti-competitive effects, the Notifying Parties submit that, if Iberdrola attempted to foreclose CPOs by e.g., raising prices, CPOs would simply switch to other electricity supplier.[286]

5.3.2.4. The Commission's assessment

(233) Iberdrola's market share in the retail supply of electricity in Spain in 2022 amounted to [20-30]%.[287] There are other sizeable competitors in this space such as Endesa, Naturgy or EDP who in 2022 had market shares of [20-30]%, [10-20]%, and [0-5]%, respectively,[288] to whom CPOs could turn to for retail supply of electricity. Based on the above, the Commission considers that it is unlikely that Iberdrola would have the ability or the incentive to foreclose CPOs from having access to supply of electricity.

5.3.3. The vertical relationship between the market for the ownership or operation of land and sites suitable for EV charging stations (upstream) and the market for the installation, operation, and maintenance of public EV charging stations (downstream) does not raise competition concerns

Customer foreclosure

5.3.3.1. The Notifying Parties' view

(234) The Notifying Parties submit that the JV will not have the ability or the incentive to foreclose other landowners active in the national market for the ownership and operation of land and sites suitable for the installation and operation of public EV charging stations in Spain. Further, the Notifying Parties consider that such foreclosure strategies would not result in anticompetitive effects.[289]

(235) In relation to the lack of ability to foreclose third-party landowners, the Notifying Parties submit that the JV will only be one of the many service providers that will be active and willing to purchase or lease land and sites suitable for the installation, operation, and maintenance of public EV charging stations.[290]

(236) In relation to the lack of incentive to foreclose third-party landholders, the Notifying Parties submit that the JV will have the incentive to consider other locations, apart from BP's stations, where it may install and operate additional EV charging stations in order to broaden its network and reach.[291]

(237) In relation to the lack of anticompetitive effects, the Notifying Parties submit that even if the JV were to install EV charging stations only on land and sites operated by BP, competing landholders would be able to sell and lease their land and sites to competing CPOs representing more than 80% of the national market.[292]

286 Form CO, paragraph 438.
287 Form CO, paragraph 428.
288 *Ibid.*
289 Form CO, paragraph 491.
290 Form CO, paragraph 492.
291 Form CO, paragraphs 493-494.
292 Form CO, paragraph 495.

5.3.3.2. The Commission's assessment

(238) As mentioned above, the Commission notes that the JV's market share in the national market for the installation, operation, and maintenance of public EV charging stations in Spain amounted to [0-5]% in 2023 potentially increasing to [0-5]%[293]in a foreseeable future (by 2026).[294] If the retained stations by Iberdrola and BP are considered, the combined market share of the JV and the Parties in this space would amount to [10-20]%[295] and [10-20]%[296] in a foreseeable future (by 2026). As mentioned by the Notifying Parties, the current share of the JV in the market downstream means that CPOs accounting for more than [90-100]% of the national market are active in the search for land and sites where to install and operate their public EV charging stations.[297]

(239) The Commission also notes that, at local level, there are a number of affected downstream markets as explained above (e.g., paragraph 216). The market investigation confirmed that for the market for the ownership or operation of land and sites suitable for EV charging stations the geographic scope is national. The majority of the market participants indicated that considerations of a location's characteristics and strategic value as a potential site for an EV charging station are the same across the entire country.[298]

(240) In light of the above, for the JV to have the ability to foreclose competitors in the upstream market, the foreclosure strategy would have to be applied throughout the national territory. As a result, a nation-wide foreclosure strategy is unlikely.

(241) The Commission therefore considers that the JV will lack the ability to engage in any customer foreclosure strategies affecting the market for the ownership or operation of land and sites suitable for EV charging stations. Specifically, the JV cannot be considered as a sufficiently relevant customer of site and landowners. Against this background, it is not necessary to assess whether the JV would have the incentive to engage in such strategies or if such hypothetical foreclosure strategy could have a significant detrimental effect on competition.

Input foreclosure

5.3.3.3. The Notifying Parties' views

(242) The Notifying Parties submit that BP – active in the national market for the ownership and operation of land and sites suitable for the installation and operation of public EV charging stations in Spain – will not have the ability or the incentive to foreclose third-party CPOs. Further, the Notifying Parties consider that such foreclosure strategies would not result in anticompetitive effects.

(243) In relation to the lack of ability to foreclose third-party CPOs, the Notifying Parties submit that: (i) BP lacks a significant degree of market power in the national market for the ownership and operation of land and sites suitable for the installation

293 Form CO, Table 47.
294 Form CO, paragraph 402.
295 Form CO, Table 8.
296 Form CO, Table 47.
297 Form CO, paragraph 492.
298 Responses to question C.B.C of the eRFI.

and operation of public EV charging stations; and (ii) any presence of BP in specific locations may be subject to changes over time.[299]

(244) In relation to the lack of incentive to foreclose third-party CPOs, the Notifying Parties submit that it is not necessary to assess incentive, as BP will make land and sites within its BP-branded fuel stations exclusively available to the JV for the installation, operation and maintenance of public EV charging stations.[300]

(245) In relation to lack of anti-competitive effects, the Notifying Parties submit that, even if the JV did engage in an input foreclosure strategy, competing CPOs in Spain would not be foreclosed and would continue to have a wide range of alternative land and sites available to them, which are suitable for public EV charging.[301]

5.3.3.4. The Commission's assessment

(246) In the market for the ownership or operation of land and sites suitable for EV charging stations, if only fuel stations are considered: (i) BP had in 2022 a market share of [5-10]% at national level[302] and (ii) at local level, BP's market share exceeded 30% in 184 potential catchment areas.[303]

(247) The results of the market investigation indicate that, for all types of land sites combined, CPOs will have sufficient alternatives for future installation and operation of new public EV charging stations in Spain post-Transaction. Specifically, 91% of respondents who expressed an opinion confirmed this analysis.[304]

(248) Further, for fuel stations only, the market investigation results also confirmed that CPOs will have sufficient alternative fuel stations for the future installation and operation of new public EV charging stations in Spain post-Transaction. Specifically, 81% of respondents who expressed an opinion confirmed this.[305]

(249) In any event, the market investigation results show that non-fuel station sites (e.g., parking lots, restaurants, hotels, or supermarkets) are viable alternatives to fuel stations for the installation, operation, and maintenance of public EV charging stations. Specifically, 88% of respondents indicated that both fuel and non-fuel sites are potential locations for EV charging stations.[306]

(250) Based on the relatively low market share of BP at a national level and on the existence of many alternative non-fuel sites where to install EV charging stations, the Commission considers that it is unlikely that BP would have the ability or the incentive to foreclose CPOs from land and sites suitable for EV charging stations.

299 Form CO, paragraphs 487 and 488.
300 Form CO, paragraph 486.
301 Form CO, paragraph 490.
302 Form CO, paragraph 471.
303 Form CO, paragraph 480.
304 Non-confidential response to question D.C.A.1.1 of the eRFI.
305 Non-confidential response to question D.C.A.1.2 of the eRFI.
306 Non-confidential response to question C.A.C.1. of the eRFI.

6. CONCLUSION

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

For the Commission

(Signed)
Didier REYNDERS
Member of the Commission