

Completed acquisition by Macquarie Bank Limited (London branch) of Utility Metering Services Limited

**ME/5260/11**

The OFT's decision on reference under section 22 given on 9 January 2012. Full text of decision published 24 January 2012.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **Macquarie Group Limited** (Macquarie) is an Australian financial services company that provides (amongst other services) banking, investment and fund management services.
2. Macquarie has numerous infrastructure investments in the UK including in the electricity and gas sectors. The relevant wholly owned Macquarie subsidiaries of interest to this case provide meter-related services to the gas and electricity sectors. They are:
  - Capital Meters Limited (CML)
  - Energy Assets Limited (EAL)
  - Macquarie Leasing (UK) Limited (MLL), and
  - Macquarie Meters 3 (UK) Limited (MM3).
3. Of relevance to this case, Macquarie provides meter asset provision (MAP) and meter asset management (MAM) services for electricity and gas energy companies in the UK.
4. Moreover, Macquarie-managed funds have a shareholding in Wales & West Utilities Limited (Wales & West), a regulated gas distribution business. Macquarie submitted that [ ]. [ ] Macquarie-managed funds may have the ability to materially to influence Wales & West. These funds can block both

Board and shareholder approvals and the funds currently appoint [ ] Board directors of Wales & West.<sup>1</sup> However, given that this does not affect the outcome of the competition assessment, the OFT had not found it necessary to conclude on whether Macquarie itself exercises any degree of control over Wales & West.

5. **Utility Metering Services Limited** (Utility Metering), which trades as 'Onstream', was a wholly owned subsidiary of National Grid plc. Utility Metering provides MAP and MAM services for electricity and gas energy companies in the UK.
6. Utility Metering's UK turnover for the year ended 31 March 2011 was over £82 million.

## **TRANSACTION**

7. On 24 October Macquarie Bank Limited (London Branch) completed the acquisition for the entire issued share capital of Utility Metering for around £[ ] million. Macquarie Bank Limited (London Branch) is ultimately wholly owned by Macquarie.

## **JURISDICTION**

8. As a result of this transaction Macquarie and Utility Metering have ceased to be distinct.
9. The UK turnover of Utility Metering exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied.
10. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

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<sup>1</sup> MGN Gas Networks (UK) Limited (MGN) is the ultimate parent company of Wales & West. MGN is [ ] per cent owned by subsidiaries of various Macquarie-managed funds. Macquarie itself owns less than [ ] of any of the relevant funds. The Macquarie-managed funds appoint [ ] to the Board of MGN.

## **MARKET DEFINITION**

11. The case involves metering services for both the electricity and gas sectors. Legislation dictates that a gas and electricity meter must be installed at every customer point to measure energy usage. As a consequence the parties submitted that there are around 27 million domestic electricity meters, 22 million domestic gas meters, 2.3 million industrial and commercial ('I&C') electricity meters and 1.5 million I&C gas meters in the UK. In total, there are around 53 million active meters in the UK.
12. By the end of 2019 (and starting in 2014) the Government wants the existing stock of meters in Great Britain to be replaced with 'smart meters'. Smart meters differ from existing meters (known as 'dumb meters') in that they allow energy companies to read a customer's energy consumption remotely and will allow for in-home displays of energy consumption.
13. There are already a relatively small number of smart meters in use in the UK. However, the regulatory framework for smart meters has yet to be finalised and so a large-scale roll-out of smart meters is not expected to begin until all the regulatory aspects are settled.

## **Product scope**

14. The parties overlap in the provision of MAP and MAM services as well as in meter data collection services.
15. MAP services are focused on the funding of meters and their rental or leasing to energy suppliers. MAP providers fund the capital cost of the meter and, in some cases, will also fund the meter installation costs. MAP providers charge a daily meter rental to energy suppliers based on amortising the cost of the meter over its life (which can be up to 20 years). OFT questioning of energy suppliers revealed that some provide their own MAP services.

16. MAM covers the installation and ongoing maintenance of meters.<sup>2</sup> MAM can be supplied on a standalone basis or it can be integrated with MAP. Like MAP services, OFT market testing in this case revealed that some energy suppliers provide their own MAM services, whether for part or all of their MAM requirements.
17. Meter data collection services refer to the collection of meter readings which are used by the energy companies for billing and other services. The data are collected manually by pedestrian meter readers for dumb meters and remotely for smart meters.
18. The parties submitted that Macquarie's presence in meter data collection services is de minimis. It provides these services for [ ] which covers [ ] meters of I&C gas customers, or [less than 10] per cent of the total UK I&C gas segment.
19. Given Macquarie's small presence in this activity and that the OFT did not receive any complaints about this area of activity, the OFT has not considered data collection services any further in this decision.

#### **Whether MAP and MAM services are distinct**

20. Ofgem has previously considered the market definition for MAP and MAM service in the gas sector in its National Grid Decision.<sup>3</sup> Ofgem concluded that 'the relevant product market is defined as the provision of installed domestic-sized gas meters, including the ancillary service of meter maintenance'.<sup>4</sup> It considered that the relevant product market was a single MAP and MAM services market.
21. MAP and MAM services can be viewed as being primary and secondary (or after-) markets. In some instances the OFT will combine primary and secondary products in the same relevant product market.<sup>5</sup>

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<sup>2</sup> In this decision the term MAM is used for both electricity and gas meter asset provision. The term 'meter operator provider', or MOP, is used throughout the industry to refer specifically to an electricity meter asset manager.

<sup>3</sup> Case CA98/STG/06, *Ofgem decision into National Grid*, 21 February 2008 (hereafter 'the Ofgem Decision').

<sup>4</sup> Paragraph 3.39 of the Ofgem Decision.

<sup>5</sup> For a discussion of such instances, see OFT and Competition Commission (CC) '*Merger Assessment Guidelines*', OFT1254, paragraph 5.2.20.

22. In this case, MAM would be a secondary product to MAP. In the Ofgem Decision, Ofgem found that in practice energy suppliers sourced meter installation and meter maintenance together with meter provision.<sup>6</sup> Ofgem did not find sufficient evidence that it would be cost effective for energy suppliers to appoint separate companies to maintain existing meters and to install meters. However, it noted that at the time competition had only recently been introduced in the domestic gas metering market and that a separate market for meter maintenance could emerge in the future.<sup>7</sup>
23. In the case of smart meters, Macquarie submitted that the complexity of the services required increases the likelihood that energy suppliers will adopt disaggregated smart metering procurement policies.
24. In its merger investigation, the OFT received confirmation from some energy suppliers that it was not necessary for a MAP provider to offer MAM services. One told the OFT that it provides its own MAM services while another said that it appoints a MAM services provider separately.
25. Moreover, MAP and MAM providers themselves told the OFT that MAP and MAM services can be offered separately by independent companies. In some cases, this may allow different participants to focus on their key strengths.
26. However, some MAP providers identified a number of benefits from offering or sub-contracting MAM services including better management of data flows, improved relationships with energy suppliers which could potentially lead to new MAP opportunities and a better ability to recycle meters and better manage meter stocks.
27. Some competitors drew a distinction between gas and electricity. One said that it considered that it was not essential for a MAP to provide MAM services for domestic electricity meters but that in gas it was common to offer MAP and MAM together, either as part of a vertically integrated company, or through a MAP sub-contracting to or partnering with a MAM.
28. The electricity industry recognises the role of the MAP as a separate entity from the MAM, both with commercial arrangements and in the data flows

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<sup>6</sup> Paragraphs 3.25 and 3.27 of the Ofgem Decision.

<sup>7</sup> Paragraphs 3.29–3.30 of the Ofgem Decision.

and central registrations systems. This is not the case in the gas sector so, for example, a stand-alone gas MAP is dependent on the MAM provider to help it identify the energy suppliers that use its meters. This is important when a household customer churns (switches energy supplier). It increases the risk that a stand-alone MAP will fail to lease the meter to the new energy supplier and that it will not recover the full costs of the meter.

29. There is some evidence that MAP providers benefit from a close working relationship with a MAM provider, for example to reduce the risk of early meter replacement. This may be more so for gas meters and I&C meters. It is not uncommon for MAP providers to sub-contract their MAM services and this could improve a MAP provider's competitive offering.
30. The OFT has assessed the merger primarily on the basis of MAP services being provided separately to MAM services. This approach reflects the merger parties' primary overlap and is a cautious approach.
31. Indeed, the parties submitted that Macquarie's share of MAM services (however segmented) is de minimis. Macquarie does not tender for MAM service contracts and currently has MAM responsibilities for [ ] domestic gas meters (out of a UK total of around 22 million) and [ ] I&C gas meters (out of a UK total of around 1.5 million). The reason that Macquarie maintains some presence in MAM activities is historic. That is, British Gas (with whom Macquarie had significant MAM contracts) provided its own MAM services from 2009. However, where end-users switched to another energy company the MAM responsibilities remained with Macquarie. Third parties corroborated this to the OFT, saying that they do not generally consider Macquarie to be a supplier of MAM services. Given Macquarie's small presence in this activity, MAM services are not considered any further in this decision.

**Whether MAP services in the gas sector are distinct from those in the electricity sector**

32. Although in this case there is no scope for demand-side substitution between renting an electricity meter and renting a gas meter from the perspective of the end-user, the OFT has examined whether this distinction is relevant for the provision of MAP services.

33. The parties submitted that MAP funding is essentially no different to other types of high unit volume, low value asset based financing (for example, financing IT equipment or mobile phones). They considered that asset finance experience in general would enable a financial or other institution to enter the MAP services market in the same way that it has done.
34. The parties told the OFT that there is a high degree of supply-side substitutability between the gas and electricity sectors for MAP services. Macquarie itself funds meters in both gas and electricity sectors, as do other MAP services providers such as Calvin Asset Management, G4S Utility Services and Siemens Metering Services. The parties argued that meter manufacturers for the different types of meters are largely the same and that the funding terms, meter installers and the asset failure risk are all essentially the same, regardless of the type of meter funded.
35. Some competitors identified a number of potential barriers to switching between the gas and electricity sectors. In particular, the two sectors had different risks as a result of different asset lives and different industry standards with regard to data flows. Indeed, third parties highlighted to the OFT that less reliable data flows in the gas sector relative to the electricity sector (for example, in the MAP provider knowing when the end user has switched energy providers) was the key reasons why some MAP services providers in the electricity sector told the OFT that they are currently reluctant to enter the gas sector.
36. Further, one third party estimated that it would take a new entrant around six to 12 months to construct a business case to enter either gas or electricity MAP provision. Another third party (who provides MAP services to the gas sector) noted that it found it difficult to gain accreditation to operate as a MAP provider in the electricity sector (it took over a year).
37. There is some evidence to suggest that there is scope for supply-side substitutability. In particular, some energy suppliers were not concerned about a MAP-specific industry experience. However, the case is not clear-cut since MAP providers identified a number of barriers to moving between gas and electricity. The OFT has proceeded on a cautious basis and adopted separate product frames for gas and electricity MAP. In any event, there is no need to conclude on this issue as the OFT did not find any competition concerns under this cautious approach.

## **Whether MAP services for domestic customers are distinct from those for I&C customers**

38. The parties submitted that there are distinct markets for domestic and I&C meters.
39. This is consistent with the Ofgem Decision which found that larger gas meters were not a demand side substitute for smaller sized gas meters, which are generally installed in the premises of domestic customers and small businesses. Ofgem found that larger meters cannot measure small gas volumes and are more expensive.
40. OFT market testing in this case found that I&C electricity meters are typically different in capabilities and price to domestic electricity meters. Meter manufactures stated that electricity meters for large I&C users were more accurate than domestic electricity meters due to the larger operating range of I&C meters.
41. Customers told the OFT that there is limited scope for demand-side substitution because generally I&C meters are different to domestic meters, principally in the volume of energy use that each can handle. Therefore, a domestic meter is not typically used by an I&C customer although some small businesses may use a domestic meter.
42. In terms of what this means for the supply of MAP services, currently some MAP service providers focus on one meter type (I&C or domestic). For example, Calvin Asset Management is only active in domestic MAP (both gas and electricity) whereas Utility Funding has focused on meters for I&C electricity users. Therefore, demand for domestic rather than I&C meters (and I&C rather than domestic meters) may impact on MAP services suppliers.
43. However, one third party who currently only provides services to one group of domestic or I&C customers, told the OFT that it is looking to provide MAP services to the other set of meters. When asked by the OFT, MAP providers did not identify any barriers to moving from I&C MAP services to domestic MAP services. For example, there is little difference in the data flows between I&C and domestic MAP services, although some said that there may be different asset risks between I&C and domestic use.

44. Therefore, it may be the case that in terms of MAP services supply, MAP services for meters designed for I&C customers and meters designed for domestic customers may form a single market. However, the OFT has not found it necessary to conclude on whether MAP services regarding meters for domestic use are distinct from MAP services regarding meters for I&C use since its competition assessment is not affected by this. The OFT has taken a cautious approach and distinguished between I&C MAP and domestic MAP services.

**Whether MAP services for smart meters are distinct from those for dumb meters**

45. Before the mandated rollout of smart meters, there may be some scope for demand-side substitution between MAP for dumb meters and MAP for smart meters. However, when energy suppliers have regulatory obligations to supply smart meter services, renting a dumb meter will not be available as a substitute.
46. Almost all third parties who the OFT spoke to said that MAP providers active in dumb meters will be capable of offering MAP for smart metering. The third parties pointed out that the advantages for current MAP providers included an understanding of the commercial framework, having existing relationships with meter manufacturers and energy companies. However, some third parties also identified some additional challenges in providing MAP services for the mandatory rollout of smart meters, including different data flows which will require IT upgrades and different asset life risks.
47. While there may be a case for considering dumb and smart MAP together as one market, in this case the OFT has taken a cautious approach and distinguished between them. Given the outcome of the substantive competition assessment under this cautious approach, the OFT has not found it necessary to conclude on the product frame with respect to this issue.

**Conclusion on the product frame of reference**

48. Based on the evidence above, the OFT adopted the following product frames of reference:
- MAP services for dumb electricity meters for domestic use

- MAP services for dumb gas meters for domestic use
- MAP services for smart electricity meters for domestic use
- MAP services for smart gas meters for domestic use, and
- MAP services for smart electricity meters for I&C use.

## **Geographic scope**

49. The suppliers and customers of MAP are based in Great Britain. As energy suppliers have a national presence, they tend to require MAP on national basis as well.
50. In the Ofgem Decision, Ofgem concluded that the relevant geographic market was Great Britain for the gas sector. Ofgem found that the conditions of supply and demand did not vary across regions within Great Britain. It excluded Northern Ireland on the basis that metering is a monopoly activity by the relevant network business in Northern Ireland. It did not widen the market to other countries as installation of a meter requires a physical presence.<sup>8</sup>
51. Macquarie submitted that given that MAP can be separated from MAM in terms of product market definition there is scope, from a supply-side perspective, for MAP to be provided by suppliers outside of Great Britain. In our market investigation the OFT found no substantial barriers for firms outside of Great Britain supplying MAP. However, the OFT notes that currently the majority of MAP providers have a presence in Great Britain.
52. The OFT has examined the case on a cautious basis and adopts Great Britain as the geographic frame of reference. Given that the OFT does not find any competition concerns under this narrow geographic frame it has not found it necessary to conclude on the relevant geographic boundary.

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<sup>8</sup> Ofgem 2008 Decision, paras. 3.40 to 3.51.

## HORIZONTAL ISSUES

### Dumb electricity meters – domestic use

53. Reliable industry-wide data on MAP services separated by dumb and smart meters are not available. However, the OFT recognises that there are relatively few smart meters currently installed. Figures for total meters therefore provide a useful proxy of total MAP services for dumb meters.
54. There are around 27 million domestic electricity meters.<sup>9</sup> The merging parties supply MAP for around [ ] dumb electricity meters ([ ] million by Macquarie and [ ] million by OnStream). Using these figures, the merging parties have a market share of [0-10] per cent for the supply of MAP services for domestic dumb electricity meters.
55. Given the long asset life of a meter, the parties' combined market share may not necessarily reflect the parties' current competitive strength. For example, over that time rival suppliers may have exited the market whereas others may have entered.
56. For example, Electricity Network Owners, also known as Distribution Network Owners (DNOs), own over 90 per cent of domestic electricity meters.<sup>10</sup> DNOs take electricity off the high-voltage transmission system and distribute this over low-voltage networks to homes, offices and industrial sites. There are 14 DNOs covering discrete regions of Great Britain. Before Ofgem's introduction of metering competition, DNOs provided electricity meters as part of their regulatory obligations. One third party told the OFT that most DNOs had exited the market since the removal of their regulatory obligations and the few that remain restrict themselves to their incumbent operating areas.
57. Macquarie submitted that Northern Powergrid, a DNO, was one of its main MAP competitors for electricity meters. Northern Powergrid is still active in the domestic electricity dumb metering market, namely the supply of MAP services for non-half hourly electricity meters for both domestic and small I&C customers.

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<sup>9</sup> Ofgem, *Review of Metering Arrangements*, 17 December 2010, paragraph 1.3.

<sup>10</sup> Ofgem, *Review of Metering Arrangements*, 17 December 2010, paragraph 1.3.

58. While DNOs have been exiting the market, other competitors known in the industry as Commercial Meter Operators (CMOs) have entered (including Macquarie and Utility Metering). Other CMOs active in MAP for domestic dumb electricity metering include Calvin Asset Management, Lowri Beck, and G4S Utility Services.<sup>11</sup> Indeed, information submitted to the OFT by third parties show that there are at least three other competitors that supply MAP services for domestic electricity meters (most of which will be dumb meters) on a similar scale to the merging parties. In addition to the CMOs listed above, domestic electricity suppliers identified Northern Powergrid, Siemens and Western Power Distribution (another DNO) as credible MAP providers. Moreover, some energy companies stated that they would also consider self-supplying MAP.
59. Utility Metering has seen a significant decline in its MAP activities in regard to domestic electricity meters. [ ].
60. The evidence above indicates that the merging parties will face sufficient competitive constraints from rivals and the possibility of self-supply in the market for MAP for domestic dumb electricity meters so that a realistic prospect of a substantial lessening of competition does not arise with regard to this activity.

### **Dumb gas meters – domestic use**

61. As with electricity, no reliable industry-wide data on market size is specifically available for dumb meters. In any case, existing shares of supply based on the installed base may not reflect the parties' current combined competitive strength.
62. Also as with electricity domestic dumb meters there are relatively few smart gas domestic meters in use. Therefore, the total number of domestic meters provides a useful proxy for dumb meters. There are around 22 million domestic gas meters in Great Britain.<sup>12</sup> The merger parties supply MAP for around [ ] million dumb gas meters ([ ] million by Macquarie and [ ] million by Utility Metering). Using these figures, the merging parties have a market share of around [10-20] per cent for the supply of MAP services for domestic dumb gas meters.

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<sup>11</sup> G4S Utility Services [ ].

<sup>12</sup> Ofgem, *Review of Metering Arrangements*, 17 December 2010, paragraph 1.9.

63. National Grid Metering owns the majority (approximately [ ] per cent) of installed domestic gas meters. National Grid Metering is a wholly owned subsidiary of National Grid plc, which before the introduction of competition, provided gas meters as part of its regulatory obligations.
64. National Grid told the OFT that [ ]. [ ] its obligations as Meter Provider of Last Resort still continue.
65. In addition to National Grid, there are other active MAP providers for domestic dumb gas meters. Domestic gas suppliers identified Calvin Asset Management, Lowri Beck, Siemens, Utility Funding Limited as credible MAP providers. Calvin Asset Management in particular is a considerable provider of MAP services in this sector. In addition, Scotia Gas Networks and G4S Utility Services are present in the sector. Moreover, some energy companies stated that they would also consider self-supplying MAP.
66. As with MAP services for dumb domestic meters in the electricity sector, [ ]. Indeed, from over the past two years it has provided MAP services for [ ] domestic dumb gas meters in the year to October 2010 but [ ] in the year to October 2011; a decline of around [ ] per cent. By way of comparison, [ ].
67. The evidence available to the OFT indicates that the merging parties will face sufficient competitive constraints from rivals and the possibility of self-supply from energy companies in the provision of MAP services for domestic dumb gas meters so that a realistic prospect of a substantial lessening of competition does not arise with regard to this activity.

### **Smart electricity meters – domestic use**

68. The mandated rollout of smart meters is yet to take place and what provision of domestic smart meters does exist is currently on a relatively small scale. Data on shares of supply of smart meters are not available.
69. The parties thus far have provided MAP services for around [ ] domestic smart electricity meters ([ ] by Macquarie and [ ] by Utility Metering).

70. Several third party competitors told the OFT that they intend to be active in the provision of MAP services for domestic smart electricity meters. A further third party, who currently provides MAP services for dumb meters, said that it is considering providing MAP services for domestic smart electricity meters. Another still, who currently provides MAP for smart I&C electricity meters, said that it would like to offer MAP services for smart domestic electricity meters.
71. Currently, Calvin Asset Management, Lowri Beck and Bglobal provide MAP services for smart electricity meters for domestic use. G4S Utility Services provides a MAP data flow service for smart meters to several of the main energy suppliers [ ].
72. Moreover, some energy suppliers told the OFT that they will also consider self-supply of MAP services. Indeed one energy supplier chose to self-supply MAP for its smart electricity meters following [ ].
73. The evidence available to the OFT indicates that the merger parties will face sufficient competitive constraints from competitors and possible self-supply in the market for MAP services for domestic smart electricity meters. The OFT does not consider that the merger raises a realistic prospect that a substantial lessening of competition arises in this activity.

### **Smart gas meters – domestic use**

74. The merging parties provide MAP for around [ ] domestic smart gas meters ([ ] by Macquarie and [ ] by Utility Metering).
75. The OFT has identified a number of MAP provider competitors in this sector including Calvin Asset Management, Lowri Beck, Smart Metering Systems (previously, UK Smart Metering), Utility Funding and G4S Utility Services.
76. One third party competitor, who is already active in domestic dumb gas metering told the OFT that it is seeking to enter into the domestic smart gas metering sector. Indeed, it has participated in recent tenders for domestic smart meters, where it has been short-listed by some energy companies.

77. The evidence available to the OFT indicates that the merger parties will face sufficient competitive constraints from competitors in the market for MAP services for domestic smart gas meters. The OFT does not consider that the merger raises a realistic prospect that a substantial lessening of competition arises in this activity.

### **Smart electricity meters – I&C use**

78. The merging parties supply MAP for around [ ] smart I&C electricity meters. In this area the increment is very small. Macquarie supplies [ ] smart I&C meters and Utility Metering [ ]. The parties' combined share of supply is low given that there are 2.3 million I&C electricity meters, many of which are smart meters (large energy users often have meters with smart functionality so that they can be incentivised to reduce demand during demand surges). Using these figures, the parties' combined market share is [0-10] per cent in the supply of I&C electricity meters.

79. There are many MAP providers that are active in I&C smart electricity meters including Utility Funding Limited, Lowri Beck, Bglobal, IMServ, Utility Partnership Limited, Siemens, Western Power Distribution and G4S Utility Services (which manages MAP data flows).

80. The evidence above indicates that the merging parties will face sufficient competitive constraints from existing and new competitors and self-supply in the market for MAP for I&C smart electricity meters. Further, the increment arising from the merger in this sector is small.

### **Barriers to entry and expansion**

81. The parties submitted that barriers to entry are low. Indeed, according to the parties the key requisites for MAP services are:

- asset management IT systems
- sufficient access to funding resources for covering the costs of entering tenders and providing the MAP services being tendered, and
- sufficient MAP opportunities to generate economies of scale.

82. The parties further submitted that any number of financial (or other) institutions would be able to fulfil these requirements, particularly in the context of the roll-out of smart meters over the next decade (which will provide numerous tender opportunities amounting to an estimated £11 billion).
83. Macquarie itself entered the market in 2003 with no prior expertise or experience in financing meter assets. Moreover, meter portfolios can be built on existing leasing and asset management systems. The parties submitted that smart meter assets are long life and generate predictable cash flows from energy companies (which are high quality clients in an essential industry) which means that they are highly attractive assets to finance and own.
84. The main requirements for entry as identified by competitors are access to funding and understanding and managing the specific asset risks. One third party argued that a certain volume of meter installations was required to access the funding markets.
85. Related to understanding and managing the specific asset risks was access to industry tracking data. Competitors raised a number of industry-wide concerns, particularly in gas metering, on putting in place industry arrangements to allow access to this data.
86. The OFT's investigation has shown that industry knowledge and IT systems are required for MAP provision, but these can be outsourced to specialist contractors. Meter testing houses such as Cambridge Consultants and SGS as well as meter manufacturers can help assess meter specific asset risk. MAM providers such as G4S Utility Services and Siemens can provide industry knowledge and IT support for industry data flows.
87. Moreover, I&C MAP providers are in a good position to enter into MAP for domestic smart meters.
88. Third parties generally told the OFT that they expect more MAP providers to enter the market with the targeted roll-out of smart meters.
89. Nevertheless, given the competition assessment above, the OFT has not found it necessary to conclude on whether barriers to entry and expansion are high.

## Countervailing buyer power

90. The parties submitted that the 'Big 6' energy suppliers may have considerable buyer power. In support of this Macquarie submitted that Ofgem, in its most recent Retail Market Review, noted that these energy companies accounted for over 99.5 per cent of domestic gas and electricity (as at August 2010).<sup>13</sup>
91. The threat of self-supply of MAP services by some energy suppliers (which has been corroborated by these energy companies) could mean that they will have some degree of countervailing buyer power. In this respect, larger energy suppliers with strong credit ratings may be in a particularly strong position given that they may have access to low cost financing. Smaller energy suppliers with lower credit ratings may find it less attractive to self-supply MAP.
92. However, given the competition assessment above, the OFT has not found it necessary to conclude on whether countervailing buyer power would be sufficient to prevent a substantial lessening of competition occurring as a result of the merger.

## VERTICAL ISSUES

93. In its investigation of the merger the OFT examined whether it poses a realistic prospect of vertical foreclosure occurring. Macquarie focuses on MAP services whereas Utility Metering offers MAP as well as MAM services and it has a smart meter manufacturing business.
94. The OFT does not consider that vertical issues arise between meter manufacturing and MAP. Its market investigation found that the MAP provider is generally not involved in the choice of meter. Energy suppliers select the meter from a large number of meter manufacturers and separately arrange funding through a MAP provider. Meter manufacturers include GE, Samsung, Landis & Gyr, EDMI, ITron, Secure George Wilson and Elster. Utility Metering itself has not been successful in developing meters and has not sold any.

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<sup>13</sup> Ofgem, *Retail Market Review*, 21 March 2011, Appendix 28, paragraph 1.4.

95. One energy supplier raised the possibility that Macquarie might try to use its MAP services to force energy companies to use other Utility Metering services (for example, MAM services). However, this concern does not seem credible based on the number of other MAP providers (discussed above). Indeed, the complainant itself uses more than one MAP provider.

### **THIRD PARTY VIEWS**

96. Third parties (MAP competitors, MAP customers, meter manufacturers and MAM providers) were generally not concerned about the merger. Energy suppliers do not consider Macquarie and Utility Metering as being close competitors.
97. Where third parties have raised concerns the OFT has discussed these above.

### **ASSESSMENT**

98. The parties overlap in the provision of MAP and MAM services regarding electricity and gas meters and in meter data collection services.
99. The overlap with respect to MAM services and meter data collection services have low increments and Macquarie does not actively compete for new contracts in either of these activities. The merger, therefore, does not raise a realistic prospect of a substantial lessening of competition in either of these.
100. For MAP services, the OFT has examined this case on the basis of the following services within Great Britain:
- MAP services for dumb electricity meters for domestic use
  - MAP services for dumb gas meters for domestic use
  - MAP services for smart electricity meters for domestic use
  - MAP services for smart gas meters for domestic use, and
  - MAP services for smart electricity meters for I&C use.
101. For the various dumb meter MAP services the parties' combined shares are low and the OFT has identified a number of competitors in each segment

who will continue to offer a competitive constraint on the merged entity after the merger.

102. For the various smart meter MAP services the OFT has been conscious that past competitive conduct with respect to dumb meters may not provide a good guide to competitive conduct for smart meters. However, by concentrating on competitor activities to date in smart metering, including third party plans to provide MAP services for smart meters, the OFT has identified a number of rivals who will provide competition in the provision of MAP services for smart meters in the electricity and/or gas sector customers. These include Calvin Asset Management (domestic electricity and gas meters), Lowri Beck (domestic electricity and gas and I&C gas meters), G4S Utility Services (domestic electricity and gas and I&C gas meters), Bglobal (domestic electricity meters), Utility Funding (domestic gas and I&C gas meters) and Siemens (I&C gas meters).
103. Given the outcome of its competition assessment the OFT has not found it necessary to conclude on whether barriers to entry and expansion are high although the OFT does note that in the past MAP service providers have been able to successfully enter and expand in the industry.
104. Likewise, although the parties submitted that the 'Big 6' energy companies possess some countervailing buyer power, the OFT has not found it necessary to conclude on that in this case.
105. Finally, the OFT has investigated whether the merger raises a realistic prospect of vertical foreclosure. On the evidence available the OFT does not consider that the merged entity would have the ability to foreclose upstream meter manufacturers or downstream MAM service providers as a result of the merger.
106. Almost all third parties are unconcerned about the merger.
107. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## DECISION

108. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.