

Anticipated acquisition by Calvin Capital UK Holdings Ltd of BV Holdings Ltd

Decision on relevant merger situation and substantial lessening of competition

ME/50767/19

Please note that [X] indicates 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.

SUMMARY

1. Calvin Capital UK Holdings Ltd (**Calvin**) has agreed to acquire the entire issued share capital of BV Holdings Ltd (**BV**).
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Calvin and BV is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of meter asset provider (**MAP**) services for traditional gas meters and for traditional electricity meters in Great Britain. Calvin also supplies MAP services for smart gas meters and for smart electricity meters. BV also supplies (i) meter installation and maintenance (**MAM**) services (also referred to as meter operator provider (**MOP**) services) for both traditional and smart gas and electricity meters; and (ii) physical meter reading and data collection/aggregation (**MDC**) services for both traditional and smart gas and electricity meters.
4. The CMA found that the supply of (i) MAP; (ii) MAM/MOP; and (iii) MDC services are not substitutable. The CMA assessed whether, for each of MAP, MAM/MOP and MDC services, it is appropriate to distinguish between (i) services for smart meters and services for traditional meters; and (ii) services for electricity meters and services for gas meters. While there is some degree of supply-side substitution in the supply of each category of services in relation to different type of meters, on a cautious basis, the CMA assessed

the effects of the Merger distinguishing between (i) services for smart meters and services for traditional meters; and (ii) services for electricity meters and services for gas meters. However, the CMA did not need to conclude on the precise product frame of reference because it identified no competition concerns on any basis.

5. Competition for the supply of MAP, MAM/MOP and MDC services occurs mostly at Great Britain level. The main customers for MAP, MAM/MOP and MDC services all have a national presence and tend to purchase its services nationally. Neither of the Parties is present in Northern Ireland. On that basis, and in line with previous CMA decisions, the CMA has adopted Great Britain as a geographic frame of reference.
6. The CMA has therefore assessed the impact of the Merger in the following frames of reference:
 - (a) supply of MAP services in Great Britain, separately for: smart gas meters, smart electricity meters, traditional gas meters, traditional electricity meters;
 - (b) supply of MAM and MOP services in Great Britain, separately for: smart gas meters, smart electricity meters, traditional gas meters, traditional electricity meters;
 - (c) supply of MDC services in Great Britain, separately for: smart gas meters, smart electricity meters, traditional gas meters, traditional electricity meters.

Horizontal unilateral effects

7. With regard the horizontal effects of the Merger in the supply of MAP services in relation to traditional meters, the CMA has found that the estimated combined shares of supply of the Parties are moderate to low, although higher in relation to the supply in MAP services in relation to traditional electricity meters. However, evidence from third parties and internal documents indicate that the Parties are not close competitors due to the differentiation between their offers. There are other suppliers of MAP services in relation to both electricity and gas traditional meters that more closely compete with Calvin than BV and that will continue to sufficiently constrain the merged entity. Therefore, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC in the supply of MAP services in relation to traditional meters (electric and gas meters) in the Great Britain.
8. With regard the horizontal effects of the Merger in the supply of MAP services in relation to smart meters, the CMA has found that, even if BV were to enter

in the supply of these services, the Merger would not result in a substantial loss of competition because BV's offer would not be competitive and BV would not have competed as closely to Calvin as the existing MAP providers to smart meters that will continue to sufficiently constrain the merged entity. Accordingly, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of loss of potential competition in the supply of MAP services in relation to smart meters (electricity and gas) in Great Britain.

Conglomerate effects

9. The CMA has also assessed whether it is or may be the case that the Merger may be expected to result in an SLC due to conglomerate effects arising as a result of the foreclosure of the merged entities' competitors in the supply of MAP, MAM/MOP and MDC services in relation to smart meters by bundling the offer of some or all of these services.
10. The CMA has found that the merged entity will not have the ability to foreclose its competitors, because of the relatively low shares of supply of the merged entity in the supply of MAP, MAM/MOP and MDC services in relation to smart meters does not give the merged entity the ability to leverage the sales of any of these services through a bundled offer to foreclose its competitors in any of the other complementary services.
11. Furthermore: (i) there are sufficient alternative suppliers of MAM/MOP services in relation to smart meters that customers using the supply of MAP services of a competitor can use and with which supplier of MAP service can partner with to supply a combined offer; (ii) there are sufficient alternative suppliers of MAP services in relation to smart meters that customers using the supply of MAM/MOP and MDC services of a competitor can use and with which suppliers of MAM/MOP and MDC can partner with.
12. Therefore, the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in the supply of MAP, MAM/MOP and MDC services in relation to smart meters in Great Britain.
13. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an **SLC** within a market or markets in the UK resulting from horizontal or conglomerate effects.
14. The Merger will therefore not be referred under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

The Parties

15. Calvin is owned by global investment fund KKR & Co. Inc¹. Almost all of Calvin's activities take place in Great Britain². Calvin is solely active in the supply of MAP services for traditional and smart gas and electricity meters for domestic buildings. Calvin had a turnover of £ [X] million for the 2018 calendar year.
16. BV is owned by several individual shareholders. BV's turnover for the 2017 calendar year was [X], all of which was for activities within the UK.³
17. BV primarily offers a range of support services for electricity and gas meters. These services can be categorised as:
 - (a) Supply of MAM/MOP services for traditional and smart gas and electricity meters⁴;
 - (b) Supply of MDC services for traditional and smart gas and electricity meters, which involves the physical reading of traditional meters and data collection and aggregation/collection for smart meters.⁵
18. BV also provides MAP services for a small number of traditional meters (resulting in a horizontal overlap between the Parties). BV tendered [X] for the supply of MAP services for smart meters in 2016 but is not currently active in either tendering for or supplying MAP services for smart meters.

Transaction

19. On 16 April 2019 Calvin entered into an agreement to acquire all the issued share capital of BV. Following the transaction, Calvin will have sole control over BV.⁶
20. The rationale for the Merger, as submitted by the Parties and supported by internal documents was to combine two complementary businesses. The

¹ Paragraph 5 of the MN states "Calvin is owned indirectly by funds advised or managed by affiliates of KKR & Co. Inc."

² Less than [0-5]% comes from outside the UK, and they are not active in Northern Ireland as noted in Para 47 Response to RFI 1.

³ Paragraph 45 of the MN. BV stated that.

⁴ Meter operator provider is a term used explicitly for electrical meters, whereas, meter asset manager can be used for either gas or electricity meters.

⁵ Additionally, some manual readings when the smart meters are not working, as explained in paragraph 38.

⁶ Paragraphs 8-10 of the MN.

Parties explained that the combination of the businesses would allow them to offer a joint service combining MAP services with installation and on-going maintenance (i.e. MAM/MOP) services and MDC services in a single contract. The Parties suggested that the Merger would create efficiencies and a more effective cost structure for customers. [✂].⁷

Jurisdiction

21. Each of Calvin and BV is an enterprise. As a result of the Merger, these enterprises will cease to be distinct within the meaning of section 26 of the Enterprise Act because Calvin will obtain sole control over BV.
22. The turnover test is met as BV (i.e. the Target) achieved £71.2 million turnover for the financial year ending 31 December 2017, all of which was generated in the UK. Although, the audited accounts for 2018 are not yet available, The Parties submitted that BV's UK turnover is still above the jurisdictional threshold in 2018.
23. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
24. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 25 June 2019 and the statutory 40 working day deadline for a decision is therefore 19 August 2019.

Counterfactual

25. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁸

⁷ Paragraphs 14 – 22 of the MN.

⁸ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

Parties' submissions

26. The Parties submitted that the competitive situation immediately prior to the Transaction is the appropriate counterfactual.⁹ The Parties also submit that:
- (a) Absent the merger BV would continue to supply MAP services on a standalone basis for traditional meters only and had no plans to enter the market for smart meters.
 - (b) Calvin had no plans to supply MOP/MAM services on a standalone basis for either traditional or smart meters.

CMA assessment

27. Prior to the Merger, Calvin have cooperated with BV in providing a bundled offer for the supply of MAP and MOP/MAM services to some customers, since they first participated in a joint tender in March 2017.
28. Although the Parties, prior to the Merger, were in discussions about continuing to cooperate in future contracts and formalising their partnership, as these discussions about the Merger and the partnership overlapped, the CMA found it is difficult to separate them on the evidence available to it and cannot exclude, as a realistic prospect, that the partnership would not have been formalised absent the Merger.
29. At Phase 1, the CMA considers the effect of the Merger against the most competitive counterfactual that represents a realistic prospect.¹⁰
30. Accordingly, on a cautious basis, the CMA assessed the effects of the Merger against the most competitive counterfactual, ie the pre-Merger conditions of competition in which the Parties cooperated on some contracts but could also have chosen to bid separately with an 'unbundled' offer or to cooperate with third parties. However, for the purposes of the present case, the conclusion on whether or not this is the appropriate counterfactual can be left open as no competition concerns arise under any plausible counterfactual.
31. The CMA also considered whether BV would have entered, on a standalone basis into the supply of MAP services in relation to smart meters. This scenario is more competitive than the prevailing conditions of competition. Consistent with its standard practice,¹¹ the CMA has assessed the impact of the Merger in the supply of MAP services in relation to smart meters against a

⁹ Paragraphs 56-59 of the MN.

¹⁰ [Merger Assessment Guidelines](#) para 4.3.5

¹¹ [Merger Assessment Guidelines](#) para 4.3.5

counterfactual in which BV is active in this frame of reference (see paragraph 42 onwards). However, for the purposes of the present case, the conclusion on whether or not this is the appropriate counterfactual can be left open as no competition concerns arise under any plausible counterfactual.

Industry background

Supply chain

32. Electricity and gas energy suppliers require three principal categories of meter services in order to provide the end product to their customers: (i) MAP services; (ii) MAM/MOP services; and (iii) MDC services. Some meter service suppliers are active across multiple categories of services. In addition, some energy companies self-supply some or all categories of meter services.
33. The primary activity of suppliers of MAP services is to purchase meters from meter manufacturers and to rent these meters to energy suppliers, typically over a 10 to 15-year period. Suppliers of MAP services seek to find sources of financing at competitive rates to support their large asset base of meters.
34. MAP service suppliers rent meters to energy suppliers through primary contracts where a new meter is installed in the home of an end consumer. Where an end consumer switches energy supplier, the new energy supplier will become the customer for the MAP services associated with that consumer's meter. MAP service suppliers and energy suppliers may enter into a contract relating to these churn customers, or the energy supplier may be charged a default unnegotiated rate.
35. In addition to the renting of meters, suppliers of MAP services are also responsible for coordinating logistics with the energy supplier, manufacturer and the supplier of MAM/MOP services, such as, handling returns and warranty issues.
36. Suppliers of MAM/MOP services are responsible for installing and maintaining meters. Suppliers of MAM/MOP services generally have direct contractual relationships with energy suppliers. However, they may on some occasions contract with a supplier of MAP services. For example, the Parties have a contractual arrangement where Calvin sub-contacts installation to BV, while for ongoing maintenance BV has a separate contract directly with the energy supplier.
37. While some energy providers either fully or partially self-supply MAM/MOP services, this option appears to be viable only for the largest energy providers, that benefit from economies of scale in providing this service. Third party

evidence indicates that self-supplying MAM/MOP services may not be a viable option for smaller energy suppliers.

38. Supply of MDC services include the manual reading of traditional meters and the reading of smart meters that have temporarily gone dumb (meaning that the meter can still record usage but cannot communicate that data remotely). MDC services also encompass the aggregation and processing of metering data that is provided to the energy supplier.
39. Some large energy suppliers self-supply MDC services. Similar to the supply of MAM/MOP services, scale is important to make self-supply viable, meaning it is unlikely to be an alternative for smaller energy suppliers.

Smart network roll-out

40. Traditional gas and electricity meters are currently being phased out and replaced by smart meters. BEIS/Ofgem's aim is to convert all traditional meters to smart meters by the end of 2020¹². Despite these efforts there appears to be a group of customers that will not be able to switch to smart meters. Customers and competitors have told us that the traditional market would continue to be active in the short to medium term.
41. Traditional meters made up 72% of all domestic meters in Great Britain as at the end of 2018.¹³ With a total of 20,197,727 traditional gas meters and 17,407,829 traditional electricity meters in use in Great Britain.

Frame of reference

Product scope

Supply of MAP, MAM/MOP and MDC services

42. The Parties submitted that the supply of MAP and MAM/MOP services are two separate markets. However, the Parties noted that these two types of services are becoming more closely aligned, as evidenced by the fact that [X].¹⁴ The Parties also identified the supply of MDC services as a separate market.¹⁵

¹² See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767128/smart-meter-progress-report-2018.pdf.

¹³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789632/2018_Q4_Smart_Meters_Report_FINAL.pdf, page 10.

¹⁴ Paragraphs 88 and 89 of the MN.

¹⁵ Paragraph 92 of the MN.

43. The CMA found that, on the demand-side, the supply of MAP, MAM/MOP and MDC services are clearly distinct. However, a number of energy suppliers indicated a preference for hiring a MAP and MAM/MOP service as a bundled product, which seemed not to apply to MDC services.
44. On the supply side:
- (a) the suppliers of MAP and MAM/MOP services are largely different, with only SMS currently offering both services; and third-party evidence indicates that the resources and technical capability necessary to supply each of these services is different.
 - (b) While there is some cross-over between suppliers of MAM/MOP and MDC services, evidence submitted by the Parties and third parties indicates that switching between or using the capacity of MDC for MAM/MOP services (and vice versa) may be difficult as MAM/MOP work requires technically trained staff whereas MDC workers do not require such technical skills.
45. The CMA therefore has considered the supply of MAP, MAM/MOP and MDC services each as a separate frame of reference.

Gas and electricity meters

46. The Parties submitted that gas and electricity meters are not demand side substitutes for end consumers or energy suppliers. The Parties submitted, however, that, for each of MAP, MAM/MOP and MDC services, it is not appropriate to distinguish between (i) services for gas meters; and (ii) services for electricity meters due to strong supply-side substitution.¹⁶ The Parties explained that the meter manufacturers for the different types of meters are largely the same and rental/leasing terms, meter installers and asset failure risk are all also broadly similar regardless of the type of meter provided. The Parties noted, however, that some factors, such as different industry data flows, could prevent a supplier switching between services for gas meters and services for electricity meters. The Parties suggested that the fact that most suppliers offered both suggests that these differences are not material.¹⁷
47. The CMA received mixed evidence on supply-side substitution. Third parties' responses to the CMA questionnaire indicate the large majority of suppliers of MAP, MAM/MOP and MDC services to smart meters offer services for both

¹⁶ Paragraph 90 of the MN.

¹⁷ Paragraphs 77 and 78 of the MN.

gas and electricity meters. Internal documents also show that Calvin does not distinguish between gas or electricity meters in a number of strategy documents relating to smart meters.¹⁸ Some competitors, however, provided services for only one type of meter (e.g. [X] provided MAP services for gas meters, but not for electricity meters). On a cautious basis, the CMA has therefore assessed the effects of the Merger in relation to the supply of MAP services for gas and electricity meters separately.

48. However, the CMA did not have to conclude on the exact definition of the product frame of reference as no competition concerns arise on any plausible basis.

Smart and traditional meters

49. Smart meters may be demand substitutes for traditional meters for consumers and energy suppliers; and, supply-side substitution between smart and traditional meter may be feasible across the range of metering services offered by the Parties (supply of MAP, MAM/MOP and MDC services).¹⁹
50. On the *Macquarie Bank Limited/Utility Metering Services Limited* merger the OFT assessed the merger on the basis of two distinct markets for the supply of MAP services in relation to smart and traditional meters respectively. The OFT noted that some third parties identified challenges in supplying MAP services for smart meters including different data flows which required IT upgrades and different asset life risks.²⁰
51. The Parties argue there is no need to sub-divide the supply of MAP services by smart and traditional meters on the basis of strong supply-side substitution, stating that it would take minimal time and cost to switch between these services.²¹
52. The information received from third parties in response to the CMA questionnaire shows that some suppliers of MAP supply both smart and traditional meters, and that the majority of suppliers of MAM/MOP and MDC service both smart and traditional meters.

¹⁸ It has a single fuel and dual fuel price (instead of gas, electricity and dual fuel price) which is further called 'Energy infrastructure', provided by its portfolio of gas and electricity meters (see Annex 3.12, slide 9 and Annex 8.5, slide 16 of the MN).

¹⁹ The second-generation smart meter is more frequently mentioned by the Parties in their internal documents and referred to as Smart Metering Equipment Technical Specification (**SMETS2**).

²⁰ Paragraph 46 of the *Macquarie Bank Limited/Utility Metering Services Limited* decision.

²¹ Paragraphs 82, 83 and 90 of the MN.

53. However, internal documents indicate that when Calvin tender with a MAM/MOP solution ie with BV, they only provide smart meters, which suggests that smart and traditional may be treated separately in some respects.²²
54. On a cautious basis, the CMA has assessed the Merger on the basis of separate frames of reference for smart and traditional meters. However, the CMA did not have to conclude on the exact definition of the product frame of reference in this regard, because it does not alter the outcome of the CMA's assessment.

Self-supply

55. For suppliers of MAP, MAM/MOP and MDC services there is a degree of self-supply by energy companies who have decided to take these services in-house. For each of these services it appears that having sufficient scale is an important factor in making self-supply a viable option and is typically only conducted by large energy suppliers.
56. As self-supply is not an alternative for most energy suppliers, the CMA has not included self-supply as part of the product frames of reference, but it considered the constraint imposed by self-supply in the competition assessment when appropriate.

Conclusion on product frame of reference

57. The CMA found that it is appropriate to treat the supply of MAP, MAM/MOP and MDC services as separate frames of reference. While there is some degree of supply-side substitution in the supply of MAP, MAM/MOP and MDC services between gas and electricity meter and between smart and traditional meters; on a cautious basis, the CMA has assessed the effects of the Merger distinguishing between each of them. However, the CMA did not need to conclude on the precise product frame of reference because it identified no competition concerns on any basis.

Geographic scope

58. Both Parties supply their services across Great Britain. The Parties are not present in Northern Ireland.²³

²² Annex 16.7 of the MN.

²³ Parties state that neither BV or Calvin operate in NI therefore there is no overlap between the Parties in NI (para 47 Response to RFI 1).

59. The Parties submitted that competition for the supply of MAP, MOP/MAM and MDC services occurs at Great Britain level because all of the main customers have a national presence for these services.²⁴
60. In *Macquarie Bank Limited/Utility Metering Services Limited* the OFT noted Ofgem's conclusion that the relevant geographic market was Great Britain for the gas sector. The OFT 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.
61. The CMA investigation, including third party submissions, indicated that the main energy suppliers have a national presence and procure metering services at national level. The evidence gathered by the CMA suggests that conditions of supply and demand do not vary across regions within Great Britain.
62. Therefore, and in line with precedent, the CMA considers that the appropriate geographic frame of reference is Great Britain.

Conclusion on frame of reference

63. The CMA has assessed the impact of the Merger in the following frames of reference:
- (a) supply of MAP services in Great Britain for each of: smart gas meters, smart electricity meters, traditional gas meters, traditional electricity meters;
 - (b) supply of MAM/MOP services in Great Britain for each of: smart gas meters, smart electricity meters, traditional gas meters, traditional electricity meters;
 - (c) supply of MDC services in Great Britain for each of: smart gas meters, smart electricity meters, traditional gas meters, traditional electricity meters.

Competitive Assessment

64. In the competitive assessment the CMA has considered the following theories of harm:

²⁴ Paragraph 87 of the MN.

- (a) Horizontal unilateral effects in the supply of MAP services in relation to traditional meters;
- (b) Loss of potential competition in the supply of MAP services in relation to smart meters;
- (c) Conglomerate effects of the Merger in the supply of MAP, MAM/MOP and MDC services in relation to smart meters²⁵, including:
 - (i) foreclosure of suppliers of MAM/MOP and MDC services from having MAP meters to service;
 - (ii) foreclosure of suppliers of MAP services from having MAM/MOP installers for their meters and suppliers of MDC services.²⁶

Horizontal unilateral effects in the supply of MAP services for traditional electricity meters and traditional gas meters

65. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to profitably raise prices or to degrade quality on its own without needing to coordinate with its rivals.²⁷ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is, or may be the case, that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the frames of reference described above in paragraphs 42-57.
66. The concern under the following theories of harm are that the removal of one party as a competitor could allow the parties to increase prices, lower quality, reduce the range of their services and/or reduce innovation. After the merger, it would be less costly for the merging company to raise prices (or lower quality) because it would recoup the profit on recaptured sales from those customers who would have switched to the offer of the other merging company.

²⁵ The CMA found that the Merger does not raise competition concerns due to conglomerate effects in the supply of MAP and MAM/MOP services for traditional meters for the following reasons: (i) the Parties' combined share of supply in the supply of MAP services to traditional meters is not high (indicating a lack of the necessary market power in traditional MAP to foreclose other markets), BV's share of supply in the supply of MAM/MOP services to traditional meters is also low, no third-parties raised concerns about the conglomerate effects of the merger in the supply of MAP and MAM/MOP services to traditional meters. Therefore, the CMA has found that the Merger does not give rise to an SLC in relation to the supply of MAP, MAM/MOP services for traditional meters as a result of conglomerate effects and has not examined the conglomerate effects of the Merger in the supply of these services further in this decision.

²⁷ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

67. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered:
- (a) Shares of supply within each frame of reference;
 - (b) The closeness of competition between the Parties; and
 - (c) Competitive constraints from other MAP service suppliers.

Parties views

68. The Parties' view is Calvin and BV's offerings are different and that they do not compete head to head. In particular, they explained that, while Calvin is a standalone supplier of MAP services, BV supplies MAP services as part of a MAM/MOP and MAP bundled offering.²⁸
69. The Parties said that Calvin's closest competitors for the supply of MAP services in relation to traditional meters are Macquarie and National Grid, and that there are other smaller suppliers of MAP services such as Northern Powergrid Metering Ltd.²⁹ They submitted that merged entity will also be constrained by self-supplying energy companies.³⁰
70. The Parties' highlight that their combined share based on stock is less than [10-20]% for both traditional gas and traditional electricity meters, and that the increment would be below 5%.³¹
71. Finally, they stated that due to the government's requirement for traditional meters to be replaced by smart meters, that the traditional market is in decline and there will be very few new traditional meters installed in the future.³²

Shares of supply

72. The shares of supply submitted by the Parties as per paragraph 70 above, are calculated using the current stock of meters owned by the Parties. The CMA does not believe that these shares of supply by stock are reflective of the competitive constraints as meters have a long asset life and are often rented out over 10-15-year periods on terms that were agreed at the point of installation. This means that shares of supply based on the volume of meters owned by a supplier of MAP services may not reflect the current competitive

²⁸ Paragraph 104 of the MN.

²⁹ Paragraph 106 of the MN.

³⁰ Paragraph below 140 (this paragraph does not have a number) of the MN.

³¹ Paragraph 107 of the MN. The Parties' share of supply estimates are based on the numbers meters owned by the parties (stock) whereas the CMA's preferred method of assessing the shares of supply is by flow, as per paragraph 68.

³² Paragraphs 108–126 of the MN.

conditions affecting new MAP contracts. For this reason, the CMA has produced shares of supply for the supply of MAP services for meters installed in 2018 (the CMA refers to these as flow estimates).

73. When calculating by flow, the lack of available external data on the total number of traditional meters installed required the CMA to calculate its shares of supply using data obtained from the Parties and their competitors for 2018. Based on the CMA's estimate, the Parties have a combined share of supply in traditional MAP services in Great Britain of [10-20]% for gas meters and [40-50]% for electricity meters. The tables below show the competitor's and the Parties' shares of supply in each relevant candidate frame of reference:

Calvin	[5-10]%	[10-20]%	[5-10]%
BV	[5-10]%	[30-40]%	[10-20]%
Parties combined	[10-20]%	[40-50]%	[20-30]%
Competitors			
Northern Power Grid	[0-5]%	[0-5]%	[0-5]%
Macquaire	[10-20]%	[50-60]%	[20-30]%
National Grid Smart	[0-5]%	[0-5]%	[0-5]%
National Grid	[70-80]%	[0-5]%	[50-60]%
Smart meter assets	[0-5]%	[0-5]%	[0-5]%

Source: Parties and third parties.³³

74. The CMA notes that the Parties have a relatively high combined share of supply in the supply of MAP services in relation to traditional electricity meters, however, when interpreting these shares, the CMA has the following observations which apply to all of the product frames of reference:

- (a) The shares calculated by the CMA are upper estimates of the Parties' share of supply because some suppliers of MAP services may not be captured in the share of supply estimates.³⁴
- (b) The CMA observed evidence that competitors are differentiated and may not cater to all customers within a frame of reference, particularly, for example, if they are a specialist supplier of MAP services or a supplier of MAP and MAM/MOP services. This means that some MAP suppliers will be closer competitors to each other than others and may act as more or less of a constraint on them than their share of supply alone might suggest.

³³ The volume information for the Parties was provided in the MN (table below paragraph 109), and the competitor volume information was provided in response to the CMA's questionnaire.

³⁴ The CMA investigation indicates that SMS is an important competitor in the supply of MAP services, but the CMA has not received revenue information in relation to this competitor.

Closeness of competition

75. Calvin is a specialist supplier of MAP services and all meters provided by Calvin were installed either by an energy company's in-house MAM/MOP team or by an independent supplier of MAM/MOP services. By contrast, BV's meters were all installed by BV for customers with whom they had a MAM/MOP contract. This suggests that BV may not compete as strongly with Calvin as Calvin does with other specialist supplier of MAP services in relation to traditional meters.
76. The Parties stated that the supply of MAP services is incidental for BV, as they are merely an add-on to its other activities. As a supplier of MAM/MOP services BV will provide a new meter in exceptional cases, such as where a replacement is required due to a gas leak.³⁵
77. An internal document from Calvin identifies [X] as the major competitors in the supply of MAP services. It indicates that Calvin does not consider BV to be a major competitor in the supply of MAP services and refers to a number of other competitors.³⁶
78. The vast majority of the energy suppliers who responded to the CMA's questionnaires either do not believe that Calvin and BV compete at all or acknowledge that they do overlap in the supply of traditional MAP services but do not compete strongly due to the nature of the BV's offering. Many energy suppliers believed the Calvin competes much more strongly with the larger suppliers of MAP services such as Macquarie. Only a very small number of customers said that the Parties did compete.
79. The evidence above indicates that the Parties are not close competitors in the supply of MAP services in relation to traditional meters.

Competitive constraints

80. In addition to BV, there are a range of competitors active in the supply of MAP services in relation to traditional meters that impose a significant competitive constraint on Calvin, such as Macquarie, SMS and National Grid Metering, as evidenced by internal documents and the views of third parties.
81. A Calvin internal document identifies as its competitors: [X].

³⁵ Teach in call note, paragraph 15.

³⁶ Annex 8.1, slide 9 of the MN. This document does not distinguish between the supply of MAP services to traditional and smart meters, nor does it distinguish between gas and electrical meters. This is common across many Calvin strategy documents.

82. During the CMA's market investigation, some competing MAP service suppliers also identified between 5 and 7 other suppliers of MAP services as their competitors. As mentioned above, BV is not mentioned as a competitor by most third parties.
83. The CMA also notes that, given BEIS's smart roll-out, the extent of competition in traditional meters is likely to be limited. The vast majority of customers that responded to the CMA's questionnaires said that [REDACTED].

Conclusion on horizontal unilateral effects in the supply of MAP services in relation to traditional meters

84. The CMA has found that the estimated combined shares of supply of the Parties are moderate, although higher in relation to the supply in MAP services for traditional electricity meters. However, evidence from third parties and internal documents indicate that the Parties are not close competitors due to the differentiation between their offers. There are other suppliers of MAP services in relation to both electricity and gas traditional meters that compete more closely with Calvin than BV and that will continue to sufficiently constrain the merged entity. Therefore, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC in the supply of MAP services for traditional meters (electricity and gas meters) in the Great Britain.

Loss of potential competition in the supply of MAP services in relation to smart meters

85. Of the Parties, only Calvin is currently active in supplying MAP services in relation to smart meters. However, as explained above in paragraph 18, BV has in the past tendered to supply these services and considered entering this area.
86. Unilateral effects can arise from the elimination of potential competition. One way in which this can occur is where the merger involves an incumbent supplier and a potential entrant that could have increased competition against the incumbent.³⁷
87. The CMA, consistent with its established guidance,³⁸ assessed whether the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects from a loss of actual potential competition by reference to:

³⁷ [Merger Assessment Guidelines](#), paragraph 5.4.13 – 5.4.15.

³⁸ [Merger Assessment Guidelines](#), paragraph 5.4.15.

- (a) Whether BV would be likely to enter the supply of MAP services in relation to smart meters in the absence of the Merger; and
- (b) Whether such entry and expansion would lead to greater competition.

Likelihood of entry

- 88. BV explained that it had previously considered entering into the supply of MAP services in relation to smart meters in 2016 and made three bids to supply these services as part of a bundled MAP, MAM/MOP and MDC offering.³⁹
- 89. Internal documents provided by BV show that, in the past, it submitted offers to supply MAP services to [REDACTED].⁴⁰
- 90. However, BV submitted that it was not able to supply MAP services of smart meters at a competitive rate because it could not secure the low-cost financing obtained by their competitors.⁴¹
- 91. BV has not submitted any bids for the supply of MAP services in relation to smart meters in the last 12 months.⁴² As a result of the time constraint imposed by the BEIS smart meter rollout plan, the majority of smart meter contracts have either recently been signed or will be signed in the near future. The CMA believes that BV's absence from the market over this 12-month period is significant, as it reduced its opportunity to secure long-term contracts for meters the next 10-15 years.
- 92. The CMA cannot exclude that BV might enter in the supply of MAP services in relation to smart meters, on standalone basis or through a partnership with another supplier of MAP services. However, the CMA has not ultimately had to conclude on whether potential entry by BV into supplying MAP services in relation to smart meters may have occurred absent the Merger as no competition concerns arise (see assessment from paragraph 93 onwards).

Competition in the supply of MAP services in relation to smart meters

- 93. Calvin is a major supplier of MAP services in relation to smart meters with a share of supply of [20-30]% for gas meters and [10-20]% for electricity meters (see Table 2 below). However, there are a number of existing competitors in the supply of MAP services in relation to smart meters such as Northern

³⁹ Paragraph 35 of the MN.

⁴⁰ These bids are in Annexes 3.6 - 3.10.

⁴¹ Ibid.

⁴² Response to RFI 4.

Power Grid, Macquarie, National Grid Smart and SMS. Additionally, there are several new entrants such as; Smart meter assets, SGN (Maple Co) SGN (MapleCo) in 2017 and Foresight and BUUK Infrastructure (SMA) in 2016.

Competitiveness of BV's offer

94. Internal documents from BV indicate that the price it offered for the supply of MAP services in relation to smart meters on a standalone basis was [redacted] than the price offered by Calvin.⁴³ This was corroborated by two energy suppliers who informed the CMA that BV's bids were not competitive on price.⁴⁴
95. BV internal documents also show that BV was unable to secure low-cost financing necessary to compete in the supply of MAP services in relation to smart meters.⁴⁵

Conclusion on loss of potential competition

96. The CMA has found that, even if BV were to enter in the supply of MAP services in relation to smart meters, the Merger would not result in a substantial loss of competition because BV's offer would not be competitive, and BV would not have competed as closely with Calvin as the existing suppliers of MAP services in relation to smart meters that will continue to sufficiently constrain the merged entity. Accordingly, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of loss of potential competition in the supply of MAP services in relation to smart meters (electricity and gas) in Great Britain.

Conglomerate Effects

97. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same market but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).⁴⁶
98. The CMA's approach to assessing vertical and conglomerate theories of harm is based on the following analysis: (a) the ability of the merged entity to

⁴³ Annex 3.7 of the MN.

⁴⁴ [redacted] mentioned that the offers submitted by BV [redacted]. [redacted] mentioned that BV [redacted].

⁴⁵ Annex 3.14 and 3.15 of the MN. The first email appears to be sent to an external adviser as Clarke Nicklin (from the email address of the recipient) is an accountancy firm.

⁴⁶ [Merger Assessment Guidelines](#), paragraph 5.6.2.

foreclose competitors; (b) the incentive of it to do so; and (c) the overall effect of such a strategy on competition.

99. In order for a realistic prospect of an SLC to arise, each and all of the three conditions above must be satisfied.
100. The CMA has considered whether a realistic prospect of an SLC would result from bundling or tying together different metering services, and as a result, foreclosing or partially foreclosing competitors from accessing MAP providers or from accessing MAP/MOP or MDC service providers for their own meters. With Calvin active in the supply of MAP services in relation to smart meters and BV active in the supply of MAM/MOP and MDC services in relation to smart meters, the CMA assessed the following conglomerate theories of harm:⁴⁷
- (a) Whether the merged entity could leverage its market power in the supply of MAP services in relation to smart meters through a bundled or tied offer in order to foreclose suppliers of MAM/MOP and MDC services;
 - (b) Whether the merged entity could leverage its market power in the supply of MAM/MOP or MDC services in relation to smart meters through a bundled or tied offer in order to foreclose suppliers of MAM/MOP and MAP services.

Parties' submissions

101. The Parties submitted that the Merger is unlikely to give rise to a reduction of competition as a result of the merged entity foreclosing its competitors both in the supply of MAP services and in the supply of MAM/MOP and MDC services for two reasons:⁴⁸
- (a) The Parties do not have large enough shares in any of the relevant frames of reference in order to engage in foreclosure; and
 - (b) The merged entity would be prevented from engaging in this strategy by energy companies with strong buyer power. The main customers for both

⁴⁷ The Parties have stated that there is a vertical relationship between Calvin and BV in relation to Calvin's MAP services and BV's MAM/MOP and MDC services. The Parties view is that MAM/MOP and MDC are downstream services to MAP (Paragraph 15 of the MN). The CMA's view is that because energy companies generally procure each of these goods from a service provider and it is rare for service providers to have contractual relationships with each other, the relationship between the services that each of the Parties offer is best categorised as complementary rather than vertical.

⁴⁸ Paragraph 154 of the MN.

Calvin and BV are the big six energy companies who all have sophisticated procurement processes.⁴⁹

Foreclosure of MAM/MOP services by leveraging the supply of MAP services

Ability

102. The CMA assessed whether the merged entity would have the ability to foreclose suppliers of MAM/MOP services in relation to smart meters from having access to meters which they can install. This is dependent on whether there are sufficient alternative suppliers of MAP services whose meters suppliers of MAM/MOP services could install. In its assessment, the CMA has considered: shares of supply, bidding data and evidence from customers and competitors.

Shares of supply

103. The table below shows the CMA estimates of the shares of supply of each of the Parties and their competitors in the supply of MAP services for smart meters based on the number of meters installed in 2018.⁵⁰

Table 2: Shares of supply in MAP for smart meters electricity and gas meters in 2018

	<i>Shares of supply for electricity meters</i>	<i>Shares of supply for gas meters</i>	<i>Total shares of supply for electricity and gas meters (including self-supply)</i>
Calvin	[10-20]%	[20-30]%	[20-30]%
Competitors			
Northern Power Grid	[10-20]%	[5-10]%	[10-20]%
Macquarie	[20-30]%	[20-30]%	[20-30]%
Foresight	[0-5]%	[0-5]%	[0-5]%
SMA	[5-10]%	[5-10]%	[5-10]%
National Grid Smart	[0-5]%	[0-5]%	[0-5]%
SGN/Maple Co	[10-20]%	[10-20]%	[10-20]%
Self-supplying energy suppliers			
Eon			[0-5]%
Other/unknown	[5-10]%	[10-20]%	[10-20]%

Source: Parties, third parties and public data.⁵¹

104. Calvin’s shares of supply of gas and electricity smart meters installed over the 2018 calendar year were [10-20]% and [20-30]%, respectively. The shares of supply include self-supplying energy companies. However, self-supply of MAP

⁴⁹ Paragraphs 160 -164 of the MN.

⁵⁰ Given that most smart meters have been installed in the past few years, shares of supply by stock are more likely to reflect current competitive conditions for smart meters than they do for traditional meters. However, the CMA’s view remains that new installs over the 2018 calendar year remain more informative than shares estimates based on stock.

⁵¹ The total number of smart meters installed in the UK is based on BEIS’s smart meter report available at <https://www.gov.uk/government/statistics/statistical-release-and-data-smart-meters-great-britain-quarter-4-2018>. Calvin provided the number of meters it owned that were installed in 2018). The number of meters owned by the competitors and self-supplying energy suppliers was provided by through the CMA’s questionnaires.

services to smart meters appears limited and the CMA's estimate of Calvin's shares of supply in gas and electricity MAP services in relation to smart meters excluding self-supply is [20-30]%.⁵²

105. Calvin's share of supply of less than 30% in the supply of MAP services for smart meters is not enough to make it an essential route to access these services.⁵³
106. The major competitors in the supply of MAP services in relation to smart meters are Macquarie, SGN (Maple Co), Northern Power Grid with shares of supply of [20-30]%, [10-20]% and [10-20]% respectively.⁵⁴ There are also a number of smaller competitors including: Foresight, SMA, National Grid Smart, Brookfields and SMS.

Bidding data

107. [X]. Over these [X] bids there was an average of 3.3 bidders per tender.
108. The tender data, therefore, indicates that energy suppliers have a number of possible suppliers of MAP services that they can use to meet their MAP requirements limiting the ability of the merged entity to impose themselves as a supplier of MAM/MOP services without making a competitive MAM/MOP offer.

Third-party views

109. Customers identified a number of alternative MAP providers, including: Northern Power Grid, Macquarie, Smart Meter Assets, Maple, Brookfield, Foresight Metering, Energy Assets and E.ON.⁵⁵
110. The vast majority of non-integrated suppliers of MAM/MOP services also submitted that there were suppliers of MAP services other than Calvin they could partner with and the majority of third parties did not express concerns in relation to the possible foreclosure of suppliers of MAP services. They explained that, although integrated suppliers of MAP/MAM/MOP services will

⁵² One energy supplier was not able to split their self-supplied meters between gas and electricity, therefore, the CMA was not able to estimate the shares of supply excluding self-supply as accurately. However, the CMA notes that it is no higher than [20-30]% for gas and [20-30]% for electricity.

⁵³ For comparison, when examining non-horizontal mergers, the European Commission uses a 30% market share threshold, below which problems are unlikely. European Commission (2008), *Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, page 16.

⁵⁴ These shares of supply include self-supplying energy suppliers.

⁵⁵ These were raised in the context of MAP services not specifically MAP services to smart meters. Most of these same customers said that they were not interested in renegotiating contracts for MAP services to traditional meters.

typically not wish to partner commercially with an independent supplier of MAP services (ie install meters for any other MAPs), there are alternative partners, apart from the merged entity and SMS, which can be retained, such as: Macquarie, SGN, SMA, Foresight, NGS and Scottish Power.

111. Two customers expressed the concern that many suppliers of MAM/MOP services are unwilling to install or service meters from other suppliers of MAP services meters' and that, as a result of the potential bundling of supply of MAP and MAM/MOP services by the merged entity, there will be less suppliers offering MAM/MOP services on a standalone basis. The CMA's view is that, in the event that the Parties' are not willing to install [or service] meters that they do not own, there are still a sufficient number of alternative suppliers of MAM/MOP services available.
112. Another customer was concerned about the vertical integration model and the reduction in the availability of services previously provided by BV. It was also concerned that the information about supplier portfolios might be shared across the services provided by the vertical integrated operation, with the impact that might have on pricing. The CMA's view in this regard is that different pricing structures would not inhibit a competitor from competing with the merged entity.

Conclusion

113. Whereas there have been concerns from a few third parties relating to the possible foreclosure of suppliers of MAM/MOP services by the merged entity, the CMA found here are sufficient alternative suppliers of MAP services available to prevent the merged entity from having the ability to foreclose its competitors in the supply of MAM/MOP services in relation to smart meters. These options are evidenced by Calvin's low shares of supply, the alternative providers identified by competitors and the number of competitors active in the supply of MAP services in relation to smart meters.
114. For the reasons above, the CMA has found that the Merger does not provide the merged entity with the ability to foreclose its competitors in the supply of MAM/MOP services in relation to smart meters. As the CMA has concluded that the Parties do not have the ability to foreclose MAM/MOP competitors, the CMA has not needed to conclude on the Parties' incentives to foreclose and the overall effect of a foreclosure strategy on competition.
115. Accordingly, the CMA concluded that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in the supply of MAM/MOP services in relation to smart meters in Great Britain.

Foreclosure of suppliers of MAP services by leveraging the supply of MAM/MOP services

Ability

116. The CMA focused its assessment on whether the merged entity will have the ability to foreclose suppliers of MAP services in relation to smart meters from having suppliers of MAM/MOP services to install their meters. This is dependent on whether there are sufficient alternative suppliers of MAM/MOP services to install the meters of competing suppliers of MAP services. In its assessment, the CMA considered: shares of supply and evidence from customers and competitors.

Shares of supply

117. Table 3 below show the CMA estimates of the shares of supply of each of the Parties and their competitor based on the number of the number of MAM/MOP installations smart meters in 2018.

<i>Table 3: Shares of supply in MAM/MOP installations for smart meters gas meters in 2018</i>						
	<i>Shares of supply for gas meters including self-supply</i>	<i>Shares of supply for gas meters excluding self-supply</i>	<i>Shares of supply for electricity meters including self-supply</i>	<i>Shares of supply for electricity meters excluding self-supply</i>	<i>Total shares of supply for electricity and gas meters including self-supply</i>	<i>Total shares of supply for electricity and gas meters excluding self-supply</i>
BV	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Competitors						
Amey	[0-5]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[10-20]%
Siemens	[5-10]%	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[10-20]%
National Grid Smart	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
<i>Total non self-supplying</i>	[10-20]%		[10-20]%		[10-20]%	
Self-supplying energy companies						
EDF energy	[0-5]%		[5-10]%		[5-10]%	
Npower	[0-5]%		[0-5]%		[0-5]%	
SSE	[5-10]%		[10-20]%		[10-20]%	
E.ON	[5-10]%		[10-20]%		[10-20]%	
British Gas	[20-30]%		[20-30]%		[20-30]%	
Scottish Power	[5-10]%		[5-10]%		[5-10]%	
<i>Total self-supplying</i>	[60-70]%		[60-70]%		[60-70]%	
Other/unknown	[10-20]%		[10-20]%		[10-20]%	

118. BV's shares of supply in smart meter installations by MAM/MOPs over the 2018 calendar year is [10-20]% and [10-20]% for gas and electricity respectively.
119. BV's share of supply of less than 30% in the supply of MAM/MOP services in relation to smart meters is not enough to make it an essential route to access these services.
120. This indicates that there are significant outside options available to suppliers of MAP services if they are no longer able to access the Parties' MAM/MOP services.

Third-party views

121. Customers identified a number of competitors in the supply of MAM/MOP services in relation to smart meters, these include: SMS, Amey, Morrisons, Siemens, Imserv, Magnum Utilities, Colin Laver, Quality Heating Services, Ganymede, Cullis Engineering and Providor.
122. Competitors in the supply of MAP services have also identified a wide range of partnering options to provide MAM/MOP services in relation to smart meters which included: Siemens, Magnum, Morrison, Actavo, Providor, Amey and Energy Assets.
123. One customer was concerned that the merged entity would be able to exploit the UK's general lack of MAM/MOP installation capacity because other suppliers of MAM/MOP services suppliers may be capacity constrained, making switching supplier difficult and leaving suppliers of MAM/MOP services with significant negotiating power. The CMA's view is that, although a lack of capacity in the market may reduce the options available for energy suppliers, it does not in itself result in a merger effect as suppliers of MAM/MOP services are already in a position to take advantage of the fact that their competitors may be constrained by worsening their offering in the supply of MAM/MOP services in relation to smart meters without losing contracts.
124. One competitor submitted that competition in the supply of MAP services is restricted by larger MAP suppliers buying MOP suppliers, because this leads to suppliers of MOP services not installing meters for other suppliers of MAP services. The CMA's view is that, although the merged entity may not have an

⁵⁶ The total number of smart meters installed in the UK is based on BEIS's smart meter report available at <https://www.gov.uk/government/statistics/statistical-release-and-data-smart-meters-great-britain-quarter-4-2018>. Calvin provided the number of meters it owned that were installed in 2018. The number of meters owned by the competitors and self-supplying energy suppliers was provided by through the CMA's questionnaires.

incentive to install the meters of competing MAPs, there are a sufficient number of alternative suppliers of MAM/MOP services available to energy suppliers for the reasons explained above.

Conclusion

125. The merged entity has a relatively low share in the supply of MAM/MOP services in relation to smart meters and there is a wide range of suppliers of MAM/MOP services available for energy suppliers to procure from which will constrain the merged entity and prevent it from being able to foreclose its competitors in the supply of MAM/MOP instalment market. Therefore, the CMA has concluded that the Merger will not provide the merged entity with the ability to foreclose its competitors in the supply of MAP services in relation to smart meters. As the CMA has concluded that the Parties do not have the ability to foreclose MAP competitors, the CMA has not needed to conclude on the Parties' incentives to foreclose and the overall effect of a foreclosure strategy on competition.
126. Accordingly, the CMA concluded that the Merger does not give rise to a realistic prospect of an SLC, as a result of conglomerate effects, in the supply of MAP services in relation to smart meters in Great Britain.

Foreclosure of suppliers of MDC services by leveraging the supply of MAP services

127. The CMA's assessment of whether the merged entity would have the ability use its market power in the supply of MAP services in relation to smart meters to foreclose MDC competitors is very similar to the CMA's assessment of the merged entity's ability to foreclose MAM/MOP competitors.
128. For the same reasons outlined above in paragraph 105, namely the sufficient number of alternative suppliers of MAP services, the CMA does not find that the merger would result in a realistic prospect of an SLC with respect to the foreclosure of MDC competitors.

Foreclosure of suppliers of MAP by leveraging the supply of MDC services

129. The CMA has also assessed whether the merged entity would have the ability to use its market power in the supply of MDC services to foreclose its competitors in the supply of MAP services to smart meters and considers that the merged entity would not have the ability to foreclose its competitors in the supply of these services because:

- (a) BV's shares of supply in MDC services for traditional and smart meters are low.⁵⁷
 - (b) No third party expressed concerns regarding the leveraging of MDC services by the merged entity to foreclose its competitors in the supply of other metering services.
 - (c) In contrast to the supply of MAM/MOP services, MDC services tend to be purchased on a standalone basis, rather than together with a supplier of MAP services.⁵⁸ Customers considered it important that MDC suppliers were willing to maintain and read all meters regardless of the meter owner, because a large proportion of meters in an energy companies portfolio will be churn customers and therefore not with their contracted supplier of MAP service;
130. The CMA has accordingly found that the Merger does not provide the merged entity with the ability to foreclose its competitors in the supply of MAP services. The CMA, therefore, has not needed to conclude on the Parties' incentives to foreclose and the overall effect of a foreclosure strategy on competition.
131. Accordingly, the CMA concluded that the Merger does not give rise to a realistic prospect of an SLC, as a result of conglomerate effects, in the supply of MAP services in relation to smart meters in Great Britain.

Conclusion on conglomerate effects

132. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to the foreclosure of suppliers of MAP services by suppliers of MAM/MOP or MDC services, or as a result of the foreclosure of suppliers of MAM/MOP and MDC services by suppliers of MAP services of smart (both electricity and gas) meters in Great Britain.

⁵⁷ The Parties informed the CMA that BV is not an appointed MDC for gas meters (RFI4 Q1). For electricity meters the Parties were not able to disaggregate between smart and traditional meters, however, the Parties stated that they rarely read smart meters and would only do so when they were faulty. To calculate the BV's share of supply the CMA used its number of electricity meters (smart and traditional) divided by the total number of traditional meters in Great Britain (including self-supply). BV's estimated share of supply of electricity meters on this basis was [5-10]%. The CMA was not able to estimate shares of supply excluding self-supply.

⁵⁸ For example, [§] made this point.

Barriers to entry and expansion

133. Entry or expansion can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁵⁹
134. However, in the present case, there was no need for the CMA to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

135. The CMA contacted the customers, suppliers and competitors of the Parties.
136. The CMA has also contacted BEIS who did not express concerns about the Merger.
137. One competitor was concerned that the Merger could reduce price transparency because integrated suppliers of MAP and MAM/MOP services can avoid charging an upfront price for instalment and instead include the price into the long-term rental price. The CMA considers that it may be attractive to some customers not having to pay for the supply of MAM/MOP services upfront.
138. Other third-party comments have been taken into account where appropriate in the competitive assessment above.

DECISION

139. For the reasons set out in this decision, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
140. The Merger will therefore **not be referred** under section 33(1) of the Act.

Sorcha O'Carroll
Director of Mergers
Competition and Markets Authority
12 August 2019

⁵⁹ [Merger Assessment Guidelines](#), para 5.8.3.