

Anticipated acquisition by Brookfield Asset Management Inc. of a minority shareholding in Scotia Gas Networks Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6960/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 1 March 2022. Full text of the decision published on 11 April 2022.

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. Brookfield Asset Management Inc. (**Brookfield**) has agreed to acquire a minority shareholding in Scotia Gas Networks Limited (**SGN**) (**the Merger**). Brookfield and SGN are together referred to as the **Parties**.
2. Brookfield is an asset management company which manages funds that own a majority stake in BUUK Infrastructure No 1 Limited (**BUUK**). In Great Britain (**GB**), BUUK installs 'last mile' connections linking premises to utilities such as gas, electricity, and heat networks. BUUK, as an Independent Gas Transporter (**IGT**) and Independent Distribution Network Operator (**IDNO**), also adopts and operates the infrastructure that it installs, as well as the infrastructure installed by other companies, (known as third party adoption).
3. SGN is, under licence from the Office of Gas and Electricity Markets (**Ofgem**), the regional gas distribution network operator (**GDN**) that supplies gas into last mile

connections through its own infrastructure for Scotland and Southern England (which encompasses South London and the South East of England). In addition, SGN also installs and adopts last mile gas connections. Furthermore, SGN has activities in third party adoption of gas and electricity connections, and the installation of heat networks through its 50% stake in Murphy Asset Services Limited (**MUA**) and a joint venture with Vital Energi (the **SGN/Vital JV**) respectively. MUA like BUUK, is an IGT and IDNO.

4. The CMA believes that it is or may be the case that each of Brookfield and SGN is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met.
5. The CMA believes that Brookfield's minority shareholding in SGN, together with other factors, confers on Brookfield the ability to exercise material influence over SGN. In particular, pursuant to the Merger, Brookfield will acquire a 37.5% shareholding in SGN, and will be the joint largest shareholder, together with Ontario Teachers' Pension Plan Board (**OTPP**). Also, Brookfield is a large and sophisticated investor with experience in the sector, and hence Brookfield may be able to influence policy formulation. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
6. The CMA has identified the following potential overlaps between the Parties' activities:
 - (a) The installation of new last mile gas connections.
 - (b) The third party adoption of new gas and electricity connections.
 - (c) The installation and adoption of heat networks.
7. In Scotland and Southern England there is also a vertical relationship between BUUK and SGN in the latter's capacity as a GDN. Installers and adopters such as BUUK need to request and seek permission from SGN to connect to SGN's gas network.
8. The CMA has assessed whether the Merger gives rise to:
 - (a) Horizontal unilateral effects in the installation of multi-unit gas connections on both a GB-wide basis and in SGN's areas of operation (Scotland and Southern England).
 - (b) Horizontal unilateral effects in the third party adoption of multi-unit gas connections on a GB-wide basis.
 - (c) Horizontal unilateral effects in the third party adoption of multi-unit electricity connections on a GB-wide basis.

- (d) Loss of potential competition in the installation and adoption of heat networks on a GB-wide basis.
- (e) Vertical effects resulting from input foreclosure of BUUK's rivals by SGN.

Horizontal unilateral effects in the installation of multi-unit gas connections on both a GB-wide basis and in SGN's areas of operation (Scotland and Southern England)

- 9. The CMA found that SGN and BUUK do not compete closely, with SGN generally supplying connections to individual properties or very small multi-unit developments and BUUK generally supplying connections to much larger multi-unit developments.
- 10. Furthermore, the CMA found that for the limited projects that SGN and BUUK do compete for, there are a large number of alternative installers available to property developers (**developers**).
- 11. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the in the installation of multi-unit gas connections on both a GB-wide basis and in SGN's areas of operation.

Horizontal unilateral effects in the third party adoption of multi-unit gas connections on a GB-wide basis and in the third party adoption of multi-unit electricity connections on a GB-wide basis

- 12. The CMA found that BUUK and MUA do not compete particularly closely. In particular, bidding data suggests that they rarely bid for the same projects, BUUK offers third party adoptions for a broader range of utilities than MUA, and BUUK and MUA rarely refer to each other in their internal documents. This is consistent with third party feedback which indicates that BUUK and MUA are not close competitors.
- 13. Furthermore, the CMA found that there are at least four other IGTs and eight other IDNOs that would constrain BUUK and MUA post-Merger for the very limited number of projects they do compete for.
- 14. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in either the third party adoption of multi-unit gas connections or the third party adoption of multi-unit electricity connections in GB.

Loss of potential competition in the installation and adoption of heat networks on a GB-wide basis

- 15. The CMA considered whether the Merger would lead to a loss of potential competition between BUUK and the SGN/Vital JV in the installation and adoption of heat networks.

16. Based on the available evidence, the CMA found that the current focus of the SGN/Vital JV is on SGN's landbanks (for which there will be no competition with third party heat network suppliers) and that the extent to which the JV will bid for third party heat network projects in the future is uncertain. Furthermore, post-Merger, the Parties will face a number of credible competitors. In particular, feedback received from competitors that responded to the CMA's merger investigation indicated that a large number of third parties are active in the installation and/or adoption of heat networks.
17. Accordingly, the CMA 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 installation and adoption of heat networks in GB.

Vertical effects resulting from input foreclosure of BUUK's rivals by SGN

18. The CMA considered whether SGN could leverage its position as GDN in Scotland and Southern England to favour BUUK's applications to connect to its network by, for example, subjecting competitors' applications to stricter standards, approving applications by BUUK more quickly, or charging competitors higher connection costs.
19. The CMA found that the ability and incentive of SGN to engage in such behaviour would be constrained by a number of factors. Under statute and licence conditions set by Ofgem that regulate the activities of GDNs, SGN is prohibited from showing any undue preference or undue discrimination in the connection of premises or pipelines operated by IGTs to their network, is subject to quality of service standards and must follow specific conditions set by Ofgem when setting charges for connections. Any breach by SGN of its duties could lead to the issuing of fines and orders by Ofgem.
20. Moreover, the CMA notes that Brookfield will only hold a minority shareholding in SGN, and therefore it would need the approval of SGN's other shareholders to favour BUUK. In this regard, the CMA notes that SGN's other shareholders have no economic interest in BUUK and therefore, no incentive to allow SGN to favour BUUK, especially if this risks financial penalties or other enforcement action. The CMA therefore considers that this would limit Brookfield's ability to use its shareholding to favour BUUK, and that that the incentive to engage in discriminatory behaviour to the detriment of BUUK's rivals will be limited. For all these reasons, the CMA considers that instances of discriminatory behaviour would likely be limited in scope such that they would not result in substantial harm to overall competition in the downstream installation and adoption of gas connections.
21. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects resulting from input foreclosure of BUUK's rivals by SGN.

Decision

22. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects, loss of potential competition or vertical effects.
23. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

PARTIES

24. Brookfield is an asset management company based in Canada operating globally. Brookfield's portfolio focuses on infrastructure, property, renewable energy, and private equity.¹ Brookfield is listed on the New York Stock Exchange and the Toronto Stock Exchange.² Brookfield's turnover in 2020 was approximately £81 billion globally and £9.8 billion in the UK.³
25. Funds managed by Brookfield own a majority stake in BUUK.⁴ BUUK is active in the gas, electricity, fibre, water and wastewater, and district energy sectors in the UK.⁵ With respect to energy, BUUK installs gas and electricity connections and adopts and operates the relevant assets pursuant to licences from Ofgem. BUUK's total turnover in 2020 was approximately £380 million in the UK.⁶
26. SGN is the second largest GDN in the UK by number of customers and area served.⁷ SGN owns Scotland Gas Networks plc and Southern Gas Networks plc, two of the eight regulated GDNs in Great Britain operating under licence from Ofgem to distribute gas through their infrastructure networks.⁸ SGN's two networks cover the whole of Scotland and Southern England (which encompasses South London and the South East of England).⁹ SGN also supplies gas to customers in the west of Northern Ireland through its subsidiary SGN Natural Gas Ltd.¹⁰

¹ [Final Merger Notice submitted by the Parties dated 12 January 2022 \(FMN\)](#), paragraph 71.

² FMN, paragraph 71.

³ FMN, paragraph 93.

⁴ FMN, paragraph 4.

⁵ FMN, paragraph 72.

⁶ FMN, paragraph 75.

⁷ FMN, paragraph 59.

⁸ FMN, paragraph 59.

⁹ FMN, paragraph 60.

¹⁰ FMN, paragraph 59.

27. SGN has a jointly controlling stake in MUA, a 50:50 joint venture with the Murphy Group (**Murphy**).¹¹ MUA, under licence from Ofgem, is active in the adoption (but not the installation) of new gas and electricity connections.¹²
28. SGN also has a joint venture with Vital Energi, the SGN/Vital JV, to develop district heat networks.¹³
29. SGN's turnover in 2020 was approximately £1.2 billion in the UK.¹⁴

TRANSACTION

30. The current shareholders in SGN are SSE PLC (**SSE**) (33.3%), OTPP (25%), the Ontario Municipal Employees Retirement System Primary Pension Plans (**OMERS**) (25%) and the Abu Dhabi Investment Authority (**ADIA**) (16.7%).¹⁵ In December 2021, OMERS announced that it had agreed to sell its shareholding to Global Infrastructure Partners (**GIP**).¹⁶
31. Pursuant to a sale and purchase agreement entered into on 2 August 2021, SSE has agreed to sell its 33.3% shareholding and ADIA has agreed to sell its 16.7% shareholding to a consortium comprising OTPP, Brookfield and StepStone. As a result, OTPP (via Apple Newco Limited) will acquire an additional 12.5% equity stake of SGN, giving it an overall stake of 37.5%, and Brookfield (via its subsidiaries UK Gas 1 Distribution Limited and UK Gas Distribution 2 Limited) will acquire a 37.5% stake in SGN.¹⁷
32. The Parties also informed the CMA that there will be some equity syndication of both the Brookfield and OTPP investments. StepStone managed funds will coinvest as part of both the Brookfield and OTPP investments in SGN. [§<].¹⁸
33. Therefore, post-Merger, Brookfield and OTPP will each hold a 37.5% shareholding in SGN, with OMERS (and subsequently GIP) holding the remaining 25%.¹⁹
34. The Parties informed the CMA that the Merger is also the subject of review by the European Commission and the competition authorities in China and Ukraine.²⁰

¹¹ FMN, paragraph 62.

¹² FMN, paragraph 63.

¹³ FMN, paragraph 65.

¹⁴ FMN, paragraph 93.

¹⁵ FMN, paragraph 31.

¹⁶ FMN, paragraph 31. This decision does not relate to any future acquisition by GIP of OMERS's stake in SGN and the CMA has made no findings regarding that planned future transaction in this decision.

¹⁷ FMN, paragraph 32.

¹⁸ FMN, paragraph 33.

¹⁹ FMN, paragraph 34.

²⁰ The Parties have already received approval from each of these authorities (FMN, paragraph 36).

JURISDICTION

35. An anticipated merger must meet the following criteria to constitute a relevant merger situation for the purposes of the Act:²¹
- (a) first, arrangements are in progress or in contemplation which will, if carried into effect, lead to enterprises ceasing to be distinct; and
 - (b) second, either:
 - (i) the UK turnover associated with the enterprise which is being acquired exceeds £70 million (the **turnover test**), or
 - (ii) the enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together will supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or in a substantial part of it. The merger must also result in an increment to the share of supply or acquisition.

Enterprises ceasing to be distinct

36. Each of Brookfield and SGN is an enterprise.
37. Two or more enterprises will cease to be distinct if they are brought under common ownership or control.²² The ability to exercise material influence constitutes the lowest level of control that may give rise to a relevant merger situation.²³ The Parties submitted that the Merger would confer on Brookfield material influence over SGN.²⁴
38. The assessment of material influence requires a case-by-case analysis of the overall relationship between the acquirer and the target.²⁵ In making its assessment, the CMA will have regard to all the circumstances of the case.²⁶
39. A finding of material influence may be based on the acquirer's ability to influence the target's policy through exercising votes at shareholders' meetings, together with, in some cases, any additional supporting factors.²⁷ In this case:
- (a) Pursuant to the Merger, Brookfield will acquire a 37.5% shareholding in SGN and will be the joint largest shareholder, together with OTPP, with the remaining 25% of shares being held by OMERS (and subsequently by GIP). In

²¹ Section 23 of the Act.

²² Section 26(1) of The Enterprise Act 2002.

²³ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), January 2022, paragraph 4.17.

²⁴ FMN, paragraph 91.

²⁵ CMA2, paragraph 4.18.

²⁶ CMA2, paragraph 4.18.

²⁷ CMA2, paragraph 4.19.

this regard, a shareholding of more than 25% of the voting rights in a UK company is generally seen as conferring material influence over the target as such a shareholding generally enables the holder to block special resolutions.²⁸

- (b) In addition, the CMA may also have regard to the status and expertise of the acquirer, and its corresponding influence with other shareholders, and may consider whether, given the identity and corporate policy of the target company, the acquirer may be able materially to influence policy formulation through, for example, meetings with other shareholders.²⁹ In this regard, the CMA notes that Brookfield is a large and sophisticated investor with experience in the sector, and hence Brookfield may be able to influence policy formulation.

40. For these reasons, the CMA believes that the Merger confers on Brookfield the ability to exercise material influence over SGN. As a result of the Merger, Brookfield and SGN will therefore cease to be distinct for the purposes of the Act.³⁰

Turnover test

41. The UK turnover of SGN exceeds £70 million, so the turnover test is satisfied.

Conclusion

42. 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.
43. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 January 2022 and the statutory 40 working day deadline for a decision is therefore 8 March 2022.

BACKGROUND

44. The Parties overlap in the installation and adoption of last mile utility connections (mainly gas and electricity). The Parties are also active in the supply of heat networks. This section provides an overview of these activities.

²⁸ CMA2, paragraphs 4.21 and 4.22.

²⁹ CMA2, paragraph 4.26.

³⁰ The CMA notes that OMERS's shareholding in SGN will remain unchanged at 25% after the Merger and that OTPP's shareholding of 25% will increase to 37.5% after the Merger. Accordingly, the CMA believes that both these shareholders currently have the ability to exercise material influence over SGN but that this level of control will not be affected by the Merger. The CMA also notes that whilst managed funds will coinvest as part of both the Brookfield and OTPP investments in SGN, [§<]. Therefore, the CMA believes that neither OMERS, OTPP, nor StepStone form part of the relevant merger situation created by the Merger.

The supply of utility connections

45. Utilities connections enable homes and other buildings to have access to essential services such as gas, electricity, water, wastewater disposal and fibre.³¹
46. Historically, utility connections were supplied by state-owned operators³² with exclusive areas of operation within the UK.³³ Many of these operators were privatised by the end of the 1990s in the UK.³⁴ Gas and electricity connections are now all supplied by private operators.

Last mile utility connections

47. Last mile connections constitute the infrastructure that connects homes and other buildings to a larger network nearby through which the essential utilities pass.
48. The previously state-owned suppliers of utilities connections³⁵ have developed (mainly owing to their historical monopoly status) large infrastructure networks that connect to the original source of the utilities. Suppliers of last mile connections typically connect to larger networks such as these and not the original utility source. For gas, the operators of such networks are the GDNs, while for electricity, the operators are referred to as IDNOs.

Installation and adoption of last mile utility connections

49. In broad terms, the supply of last mile utility connections involves two stages. These are:
 - (a) Installation, which involves the placing of the physical infrastructure required to activate the connection (eg pipes connecting a building to a network in the case of gas connections);³⁶ and
 - (b) Adoption, which involves the ownership and long-term management of the installed infrastructure.³⁷ Adoption responsibilities include asset management and maintenance and charging property owners for such services.³⁸

³¹ Tony Hockley, LSE, '[Building Back Faster: Utility connection competition and UK policy priorities for the 2020s](#)', October 2020, page 9.

³² House of Commons Library, '[Privatisation: RESEARCH PAPER 14/61](#)', 20 November 2014, page 2.

³³ Tony Hockley, LSE, '[Building Back Faster: Utility connection competition and UK policy priorities for the 2020s](#)', October 2020, page 9.

³⁴ House of Commons Library, '[Privatisation: RESEARCH PAPER 14/61](#)', 20 November 2014, page 2.

³⁵ With the exception of water utilities that remain state-owned in Northern Ireland and Scotland.

³⁶ FMN, paragraph 128.

³⁷ FMN, paragraph 128.

³⁸ FMN, paragraph 128. The CMA has used the terms 'installation' and 'adoption' throughout this decision to describe the different aspects of the utilities' installation process but is aware that different operators refer to these activities using different terminology, particularly in the case of heat networks. The CMA has used this terminology for convenience and consistency only.

50. Some suppliers offer both installation and adoption, whilst others are involved in only one of the two stages.³⁹ The process whereby a company both installs and adopts a particular connection is known as self-adoption. Suppliers that adopt a connection installed by another company (and are therefore not involved in the installation itself) are referred to as third party adopters.
51. Some companies offer installation and/or adoption for multiple utilities. For example, some suppliers offer dual fuel connections (ie gas and electricity).⁴⁰ Other suppliers offer all utility connections, including water, waste water disposal, and fibre.⁴¹ Many developers prefer to work with multi-utility connection suppliers due to the convenience of working with a single supplier for multiple utilities.⁴² However, some developers choose to use separate suppliers for different utilities.⁴³

Interactions between developers, installers, and adopters

Developers and installers

52. Developers take into account their utilities connection requirements in the pre-build planning stage for a site.⁴⁴ At this stage, a developer may either approach an installer directly (which may or may not also have an adoption service) to procure a quotation for the installation work, or ask multiple installers to engage in a tender process.⁴⁵
53. Whilst installers do compete on price, the installation cost typically forms a small portion of the total cost of a developer's project, and developers therefore also choose installers on the basis of other factors, including quality and speed of service.⁴⁶

Installers and adopters

54. Developers tend to have little to no interaction with the process of adoption, which is left to the installer to arrange with a third party adopter or, where applicable, its own affiliated adoption division.⁴⁷
55. Third party adopters pay installers an asset value payment in return for the future revenue stream associated with the installed assets.⁴⁸ The asset value payment is

³⁹ For example, as noted in paragraph 27 above, BUUK offers both installation and adoption, while MUA only offers adoption services.

⁴⁰ FMN, paragraph 204.

⁴¹ FMN, paragraph 204.

⁴² See footnote 105.

⁴³ FMN, paragraph 204.

⁴⁴ [redacted].

⁴⁵ [redacted]. See also Note of call with Barratt Homes, 26 November 2021, 26 November 2021, paragraph 3- Barratt 'invite[s] a variety of utility installers... to tender'.

⁴⁶ [redacted].

⁴⁷ FMN, paragraph 131.

⁴⁸ FMN, paragraph 223.

then offset by the installer against the total costs charged to the developer⁴⁹ (ie the higher the asset value payment by the third party adopter to the installer, the lower the costs ultimately charged to the developer for installation). Where the installer is also the adopter, the quote to the developer will reflect the future revenue stream it expects to generate from the asset.⁵⁰ In both scenarios, the developer benefits by reducing their capital costs.⁵¹

56. Installers will typically contract with a single third party adopter for each site but may work with a number of different adopters across different projects.⁵² Third party adopters mainly compete to win business from installers by offering higher asset payments, although other factors are also considered, including quality of service.⁵³
57. It is unusual for a supplier with both installation and adoption capabilities to not self-adopt the connections it installs.⁵⁴ This means that where a developer selects an installer with adoption capabilities, that connection is typically no longer contestable for third party adopters.

Last mile gas connections

58. The market for last-mile gas connections (both installation and adoption) was opened to competition in 1995.⁵⁵ Since then, installers, referred to as utility infrastructure providers (**UIPs**), and adopters, referred to as IGTs, have become more active in providing last-mile connections alongside the incumbent GDNs.^{56, 57}

Regulation

59. GDNs and IGTs operate under licences granted by Ofgem. GDNs and IGTs have duties and obligations under legislation and the regulatory framework set by Ofgem.
60. As UIPs are not transporters of gas, they do not require a licence from Ofgem to carry out their activities. However, UIPs are accredited and audited by the Gas Industry Registration Scheme (**GIRS**) for various credentials including health, safety, environmental and quality standards.⁵⁸

⁴⁹ FMN, paragraph 201- the quote provided by installation providers will typically be a single quote for the provision of the utilities (but, in economic terms, this quote will reflect the installation cost offset by the adoption payment ... that the installer will receive from the adoption provider). If the installation provider (i.e. a UIP or ICP) does not also provide adoptions, it will factor in the asset value payment it has agreed with a third party adoption provider.

⁵⁰ FMN, paragraph 201.

⁵¹ FMN, paragraph 242.

⁵² [redacted].

⁵³ [redacted].

⁵⁴ For example, [redacted] stated that '(b)oth Murphy's and BUUK have their own installation operations...(and) (w)here BUUK or Murphy's undertake the installation it makes the connections effectively non-addressable for [redacted], as they utilise their own adoption services' (see [redacted] response to CMA competitor questionnaire dated 12 January 2022).

⁵⁵ FMN paragraph 128.

⁵⁶ However, certain characteristics of and the law regulating GDNs in the UK may mean that their role in gas connections differs, to an extent, from that of UIPs and IGTs.

⁵⁷ FMN, paragraph 3.

⁵⁸ See, for example, [Microsoft Word - How do I obtain a one-off gas connection to Industrial and Commercial properties.doc \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/microsites/gas-connections/properties.doc).

Duty to connect

61. Broadly, the Gas Act 1986 (**the Gas Act**) requires both GDNs and IGTs to supply a connection to their gas networks on request, where the relevant premises are located within 23 metres of the GDN's/IGT's network.⁵⁹
62. Furthermore, in broad terms, the duty to connect also applies where the occupier/owner of the premises supplies and lays pipes which reach the GDN's/IGT's network.⁶⁰ In practice, this means that a GDN/IGT is required to grant a UIP a connection to its network where the UIP places the pipework needed to reach that network.
63. Due to the reach of GDNs' pre-existing networks, it is often the case that UIPs rely on and therefore request connections to the GDNs' networks. These requests go through an application process which may vary in duration and complexity depending on different factors including the specific gas load/pressure needed by the premises in question.⁶¹

Pricing

64. GDNs and IGTs must follow specific conditions set by Ofgem in setting their charges/prices for connections.⁶² These conditions control the revenue allowed to be recovered for connections by licensees.
65. Specifically, where a GDN's/IGT's network is within 23 metres of a domestic property for which a connection is requested, the GDN/IGT must provide the first 10 metres free of charge (**s10(1)(a) connections**).⁶³ This discount is known as the Domestic Load Connection Allowance (**DLCA**). Such connections are usually supplied by the incumbent (ie the GDN/IGT whose network is within 23 metres of the property in question) and may not be as actively contested by UIPs. This is typically because the incumbent tends to be the cheapest option due to the application of the DLCA discount.⁶⁴
66. There are also some differences between the way GDNs and IGTs can price under the current conditions set by Ofgem. In particular, GDNs, unlike IGTs, are not permitted to include the recovery of any asset value payments made for the adoption of the gas connection when determining their charges.⁶⁵

⁵⁹ See sections 9 and 10 of the Gas Act.

⁶⁰ Section 10(1)(b) of the Gas Act.

⁶¹ FMN, paragraph 356.

⁶² See Standard Condition 4B: Connection Charging Methodology, [Gas Transporter Standard Licence Conditions 08 04 2021 \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/gas-transporter-standard-licence-conditions-08-04-2021). This includes the requirement to publish the charging methodology (see section 8 of Condition 4B).

⁶³ FMN, paragraph 136.

⁶⁴ FMN, paragraph 136.

⁶⁵ For example, see [Scotland Gas Networks Condition 4B Statement \(sgn.co.uk\)](https://www.sgn.co.uk/Scotland-Gas-Networks-Condition-4B-Statement), page 14.

Duty to avoid undue preference or undue discrimination and service standards

67. Under section 9(2) of the Gas Act GDNs and IGTs have a duty to avoid any undue preference or undue discrimination in the connection of premises or pipelines operated by IGTs, or the terms under which the connection is provided.⁶⁶ In addition, GDNs and IGTs are obliged to comply with a set of standard licence conditions imposed and enforced by Ofgem from the day the licence is granted.⁶⁷
68. These conditions include quality of service standards that GDNs and IGTs must adhere to. For example, under Standard Special Condition D10 a GDN must achieve a 90% performance standard to issue quotes for connections and make connections and to complete certain works within designated timeframes.⁶⁸ Furthermore, Standard Licence Condition 4B obligates both GDNs and IGTs to ensure their connection charging methodologies do not restrict, distort or prevent competition, and to ensure that no undue preference or undue discrimination is shown by the licensee.⁶⁹ The methodologies must reflect, as far as is reasonably practicable, the costs incurred by the licensee and a reasonable profit where permitted.⁷⁰
69. In practice, these statutory provisions and licence conditions mean that a GDN must adhere to minimum standards, are prohibited from discriminating in its dealings with UIPs/IGTs and must not show any preferential treatment towards any particular UIP/IGT.

Last mile electricity connections

70. Distribution Network Operators (**DNOs**) are the equivalent of GDNs in electricity. DNOs are the formerly state-owned regional monopolies for electricity connections. Since 2000, electricity connections have been open to competition.⁷¹ The installers and adopters that have emerged as a result of this new competition are commonly referred to as Independent Connection Providers (**ICPs**) and IDNOs respectively.

Heat networks

71. Heat networks are systems through which buildings can be heated or cooled using a network of pipes through which steam, hot water, or chilled liquids pass.⁷² These systems rely on a central source of heat (also known as an energy centre) which

⁶⁶ Section 9(2) of the Gas Act.

⁶⁷ See [Licences and licence conditions | Ofgem](#).

⁶⁸ See Condition D10 of [Standard Special Conditions - PART D Consolidated - 01 09 2021 \(ofgem.gov.uk\)](#).

⁶⁹ See [Gas Transporter Standard Licence Conditions 08 04 2021 \(ofgem.gov.uk\)](#).

⁷⁰ See [Gas Transporter Standard Licence Conditions 08 04 2021 \(ofgem.gov.uk\)](#).

⁷¹ Ofgem, '[A Review of the Development of Competition in the Designated Electricity Market](#)', June 1999, page 3.

⁷² FMN, paragraph 153.

can be supplied by a diverse range of mechanisms including, for example, gas-fired combined heat and power units, heat pumps, or electric boilers.⁷³

72. Heat network systems can vary in size. Some, known as communal heating, cater to multiple occupants in a single building. Others, known as district heating, cater to multiple buildings.
73. Some district heating systems have wider reach than others. Whilst some systems can only serve multiple buildings located close to each other, others can reach and serve multiple buildings spread across larger regions.⁷⁴ The reach of the particular heat network system depends on the capability of the heat source.
74. Broadly, the installation and operation of heat networks involves two stages:
 - (a) 'Design and build' includes the installation of the energy centre and the other physical infrastructure (eg the pipes). The CMA refers to this phase as 'installation' when discussing heat networks in this decision.
 - (b) The 'operational phase' involves ensuring the supply of heat, maintenance of the heat network, and charging customers. The CMA refers to this phase as 'adoption' when discussing heat networks in this decision.
75. Heat networks are generally considered to be more sustainable and more environment-friendly ways of heating buildings⁷⁵ than through, for example, gas.
76. Currently, only a small portion of UK households are served by heat networks.⁷⁶ The government has plans to help increase the number of households using heat networks in light of its sustainability goals.⁷⁷

COUNTERFACTUAL

77. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).⁷⁸ For anticipated mergers, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.⁷⁹
78. The CMA's assessment of the counterfactual will often focus on significant changes affecting competition between the merger firms, such as entry into new markets in

⁷³ SGN, [3<].

⁷⁴ For example see SGN, [3<]- E.ON has a network in London that provides 6 kilometres of heating.

⁷⁵ [3<].

⁷⁶ See [Heat Networks: Building a Market Framework: government response to a consultation \(publishing.service.gov.uk\)](#), December 2021, page 4.

⁷⁷ See [Financing Heat Networks in the UK: Guidebook \(publishing.service.gov.uk\)](#), August 2018, page 11.

⁷⁸ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

⁷⁹ [CMA129](#), paragraph 3.2.

competition with each other.⁸⁰ Moreover, the CMA is also likely only to focus on significant changes where there are reasons to believe that those changes would make a material difference to its competitive assessment.⁸¹ The counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the merger.⁸² Those conditions are better considered in the competitive assessment.⁸³

Parties' submissions

79. The Parties submitted that the CMA should assess the competitive effects of the Merger according to the prevailing conditions of competition but that the CMA should also account for the competitive impact of expected policy and legislative changes in the relevant markets.⁸⁴
80. In particular, the Parties submitted that demand for new gas connections is likely to progressively decrease as a result of the Future Homes Standard (**FHS**), which will ban new natural gas connections from 2025 in England and 2024 in Scotland, in accordance with the UK Government's commitment to reduce emissions to zero by 2050.⁸⁵
81. According to the Parties, while competition will remain intense between the large number of providers of new gas installations and adoptions in the interim period until the FHS takes effect, new gas connections business for domestic properties will decrease and potentially end by 2025.⁸⁶ The Parties also submitted that some suppliers and developers are already adjusting their competitive behaviour to reflect the FHS and government policy.⁸⁷
82. However, the Parties also submitted that although they consider competition will likely focus more on new electricity connections and alternative technologies, there is uncertainty.⁸⁸

CMA assessment

83. Third party evidence generally supported the Parties' submissions that the sector is undergoing changes as a result of the expected policy and legislative changes to reduce emissions to zero by 2050.
84. Although the CMA found that the activities affected by the Merger are undergoing significant changes due to the FHS, the CMA considers that there is uncertainty

⁸⁰ [CMA129](#), paragraph 3.8.

⁸¹ [CMA129](#), paragraph 3.9.

⁸² [CMA129](#), paragraph 3.7.

⁸³ [CMA129](#), paragraph 3.7.

⁸⁴ FMN, paragraph 104.

⁸⁵ FMN, paragraphs 24 and 106.

⁸⁶ FMN, paragraph 109.

⁸⁷ FMN, paragraph 110.

⁸⁸ FMN, paragraph 124.

over how and when the expected changes will occur. The expected changes also do not alter the fact that the Parties currently compete (and will continue to compete in the interim period until the FHS takes effect) with each other in the adoption and installation of new gas connections. Accordingly, the CMA does not consider that these changes would have a significant effect on the prevailing conditions of competition absent the Merger.

85. The CMA therefore believes the prevailing conditions of competition to be the relevant counterfactual. Notwithstanding this, the CMA acknowledges that the sector in which the Parties operate is evolving and it has considered the effect of industry developments on conditions of competition more generally where relevant as part of its competitive assessment below.

COMPETITIVE ASSESSMENT

Frame of reference

86. Market definition is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise from the competitive assessment.⁸⁹ It involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.⁹⁰
87. The outcome of any market definition exercise does not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way.⁹¹ In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁹²
88. The Parties overlap in the following activities:
- (a) installation of new gas connections;
 - (b) third party adoption of new gas and electricity connections;⁹³ and
 - (c) the supply of heat networks.

⁸⁹ [CMA129](#), paragraph 9.1.

⁹⁰ [CMA129](#), paragraph 9.2.

⁹¹ [CMA129](#), paragraph 9.4.

⁹² [CMA129](#), paragraph 9.4.

⁹³ The CMA also considered a potential overlap in relation to third party adoption of other utilities connections (water, fibre and heat networks) given that BUUK is currently active with respect to new connections for these other utilities [3<] notes the potential to expand its offering into these utilities. However, given that the available evidence, and in particular SGN and MUA's internal documents [3<], and the availability of other adopters of these utilities, the CMA has not considered this potential overlap further in this Decision.

89. There is also a vertical relationship between BUUK as a UIP/IGT and SGN in its capacity as a GDN in Scotland and the South of England.⁹⁴ In these regions, IGTs/UIPs need to request and seek permission from SGN to connect to SGN's gas network.⁹⁵ Once approved, gas is transported from SGN's network into and through the gas connections adopted by IGTs.⁹⁶

Product scope

Gas and electricity connections

Parties' submissions

90. The Parties submitted that:

- (a) electricity and gas connections should form separate frames of reference;⁹⁷
- (b) installation and third party adoption should form separate frames of reference;⁹⁸
- (c) connections to domestic and non-domestic premises should be part of the same frame of reference;⁹⁹ and
- (d) in relation to gas connections only, a distinction should be made between **s10(1)(a) connections** (see paragraph 102 below) and other connections.¹⁰⁰

CMA assessment

- Segmentation by type of utility

91. The Parties overlap in the installation and adoption of new gas connections, and the adoption of new electricity connections.¹⁰¹ The CMA notes that a number of installers and adopters are active across multiple utilities (including gas and electricity). The CMA therefore considered whether there is a single product frame of reference encompassing both gas and electricity connections (and possibly other utilities) or whether the product frame of reference should be segmented by type of utility.

92. In *Brookfield Infrastructure Partners LP/Inexus Group Limited (Brookfield/Inexus)* the OFT did not reach a definite conclusion on frame of reference, but considered

⁹⁴ FMN, paragraph 353.

⁹⁵ FMN, paragraphs 353 and 356-357.

⁹⁶ FMN, paragraph 353.

⁹⁷ FMN, paragraph 141.

⁹⁸ FMN, paragraph 141.

⁹⁹ FMN, paragraph 142.

¹⁰⁰ FMN, paragraph 143.

¹⁰¹ As mentioned in paragraph 27 above, both BUUK and SGN are active in the installation and adoption of new gas connections, and MUA is active in the adoption of new gas connections (MUA is not active with respect to installations). Both BUUK and MUA are also active with respect to the adoption of new electricity connections.

the effects of the transaction in gas connections and electricity connections separately.¹⁰²

93. The CMA notes that BUUK breaks down its analysis of sales according to utility type, namely 'gas', 'electricity', 'fibre', and 'other'.¹⁰³ Moreover, there are notable differences in the number of gas and electricity connections made by BUUK, suggesting that electricity and gas connections are not always supplied together as a bundle.¹⁰⁴
94. Evidence from third parties indicates that while some developers may have a preference to contract multiple utilities as a bundle from the same supplier,¹⁰⁵ there are circumstances where developers contract different utilities from different installers.¹⁰⁶ These are due to different factors including project-specific requirements and historically good working relationships with particular installers which happen to only install a single utility.¹⁰⁷
95. The CMA has also received evidence indicating limited supply-side substitutability between electricity and gas connections. Although some suppliers such as BUUK install and adopt connections for multiple utilities, some suppliers are only active in a single utility. For example, GDNs such as SGN only install and adopt gas connections, and some third party adopters only adopt electricity connections and not gas.¹⁰⁸
96. Furthermore, 'gas only' installers and multi-utility installers obtain different types of accreditation from GIRS, which recognises and distinguishes the additional technical expertise required to be able to install multi-utility connections.¹⁰⁹ IGTs (gas) and IDNOs (electricity) are also subject to different licensing regimes by Ofgem.
97. Accordingly, on a cautious basis, the CMA has assessed the impact of the Merger in gas connections and electricity connections separately.
 - Segmentation by installation and third party adoption
98. Some companies offer both installation and adoption (including both third party adoption and self-adoption). The CMA therefore considered whether installation and adoption should be considered together as a single frame of reference. The CMA

¹⁰² *Brookfield Infrastructure Partners LP/Inexus Group Limited ME/5620/12* (25 October 2012), paragraph 25.

¹⁰³ See BUUK, [§].

¹⁰⁴ See BUUK, [§].

¹⁰⁵ [§].

¹⁰⁶ [§].

¹⁰⁷ [§].

¹⁰⁸ [§].

¹⁰⁹ See [Gas Industry Registration Scheme \(Irqa.com\)](http://Gas Industry Registration Scheme (Irqa.com)).

also considered whether it is necessary to assess the impact of the Merger in third party adoptions separately.

99. In *Brookfield/Inexus* the OFT considered whether competition concerns arose in the supply of installation and third party adoption services separately.¹¹⁰ In doing so, the OFT observed that there are different regulatory requirements for installation and adoption.¹¹¹
100. The CMA has received evidence indicating that there is limited supply-side substitutability between installation and third party adoption. While some companies such as BUUK supply both installation and third party adoption, there are many that do not.¹¹² Also, consistent with the OFT's observations, the CMA notes that companies must obtain licences from Ofgem to adopt gas and electricity connections.¹¹³ Installers on the other hand do not require an Ofgem licence.¹¹⁴ One installer indicated that it would take around [X] months to obtain an Ofgem licence and cost approximately £[X], and noted that new adopters need to [X] to be able to sustain an adoption business.¹¹⁵ These factors suggest barriers to entry for third party adoption may be higher than for installation and may explain why there are considerably more installers than adopters in operation.¹¹⁶
101. Accordingly, the CMA has assessed the impact of the Merger in installation and adoption separately. However, the CMA has taken into account any interactions between installation and adoption in the competitive assessment below.
- For gas connections, segmentation into s10(1)(a) connections and other connections
102. The Parties submitted that s10(1)(a) connections are mostly installed and adopted by the company that owns and operates the incumbent network located within 23 metres of the relevant premises and that, in practice, there is no competition for these connections.¹¹⁷ The Parties submitted that this is because:
- (a) these connections tend to involve one-off or small developments, which are highly unlikely to be commercially attractive to most UIP/IGTs;
 - (b) given that these connections are within 23 metres of a main, construction is more likely to involve digging in a public highway. Due to the need to comply

¹¹⁰ *Brookfield Infrastructure Partners LP/Inexus Group Limited ME/5620/12* (25 October 2012), paragraph 31.

¹¹¹ *Brookfield Infrastructure Partners LP/Inexus Group Limited ME/5620/12* (25 October 2012), paragraph 27.

¹¹² As of March 2022 there were 185 UIPs for gas (see Find a GIRS accredited UIP (Irqa.com)), but only 9 IGTS (see List of all gas licensees including suppliers | Ofgem). A number of IGTS including ESP and MUA do not install connections.

¹¹³ FMN, paragraph 129. See also, [Licences and licence conditions | Ofgem](#).

¹¹⁴ See [Licences and licence conditions | Ofgem](#). However, note as discussed in paragraph 96, that installers need accreditation from GIRS.

¹¹⁵ Note of call with Aptus, 18 November 2021, paragraph 20.

¹¹⁶ See footnote 112.

¹¹⁷ FMN, paragraph 136.

with traffic management legislation, the cost and complexity of this type of work is far higher than for greenfield or brownfield re-development sites; and

- (c) competing UIPs/IGTs are unlikely to be cost competitive with the incumbent, given that the incumbent is required to provide the first 10 metres of the gas connection for free pursuant to the DLCA.¹¹⁸

103. Consistent with the Parties' submissions, evidence from third parties suggests that the DLCA generally makes the incumbent more competitive on price for one-off connections or very small developments within 23 metres of the incumbent's network.¹¹⁹ Furthermore, the available evidence indicates that non-incumbent installers and adopters generally do not consider smaller developments to be commercially attractive as they are less profitable than larger developments.¹²⁰
104. However, third party evidence suggests that larger developments (or parts of them) may also fall within 23 metres of an incumbent's network, but still be strongly contested for and won by a UIP/IGT as the size of the development means that it remains profitable for an independent installer and adopter notwithstanding the DCLA.¹²¹
105. The CMA therefore believes that any further segmentation of installations and adoptions of gas connections should be based on the size of the development, and not, as the Parties suggest, on the distance between the development and the nearest network. This view is also consistent with *Brookfield/Inexus* where the OFT segmented gas and electricity connections into multiple housing projects, and 'one-off' connections (ie to an individual house).¹²²
106. BUUK, as an independent installer and adopter, tends to target larger developments with multiple units (which may either be flats, houses, or commercial properties), and therefore multiple connections.¹²³ Accordingly, the CMA has assessed the impact of the Merger in multi-unit connections.
- Segmentation by customer group (domestic/non-domestic)
107. In *Brookfield/Inexus* the OFT did not segment connections into domestic and non-domestic, and noted that 'no third party had identified a market for industrial and commercial connections alone'.¹²⁴

¹¹⁸ FMN, paragraph 136.

¹¹⁹ See, for example, [§<].

¹²⁰ See for example, the difference in the size of the developments that each of SGN and BUUK serve as reflected by the data discussed in paragraph 145.

¹²¹ See, for example, [§<].

¹²² *Brookfield Infrastructure Partners LP/Inexus Group Limited ME/5620/12* (25 October 2012), paragraph 37 and 38.

¹²³ As discussed in paragraph 145 below, data suggests that BUUK predominantly targets larger projects.

¹²⁴ *Brookfield Infrastructure Partners LP/Inexus Group Limited ME/5620/12* (25 October 2012), paragraph 40.

108. The CMA did not receive any evidence to suggest that any departure from the approach adopted in *Brookfield/Inexus* would be warranted.
109. Accordingly, the CMA has assessed the impact of the Merger in both domestic and non-domestic connections together.

Heat networks

110. The Parties submitted that that the correct product frame of reference is the supply of district heat.¹²⁵

CMA assessment

111. The CMA considered whether heat networks should be segmented into district heating and communal heating, and whether a distinction should be drawn between the installation and adoption of heat networks.
112. In July 2018 the CMA published its final report of its market study of heat networks (**Heat Networks Report**). The Heat Networks Report recognised and covered both communal and district heating, focusing on the effects of market conditions on end-customers.¹²⁶ The Heat Networks Report noted that district or very large communal heating schemes are more commonly built and adopted by ESCOs.¹²⁷ Smaller communal heating schemes are commonly managed by the property owner.¹²⁸
113. The CMA notes that the SGN/Vital JV is focussed on district heat.¹²⁹ In light of this and the findings in the Heat Networks Report, on a cautious basis, the CMA has assessed the impact of the Merger in the supply of district heat networks.
114. The Heat Networks Report recognised that the delivery of heat networks takes place in two phases namely ‘the development and construction of the infrastructure (design, build and commissioning)’ (installation), and ‘the operational phase (supply, maintenance and customer management)’ (adoption).¹³⁰ The Heat Networks Report indicated that developers may appoint separate specialists for each phase of delivery.¹³¹
115. In this regard, an SGN internal document states that the heat network value chain consists of several different activities such as asset ownership, ‘M&E’ design, network building, operation and maintenance, and customer billing.¹³² However, the

¹²⁵ FMN, paragraph 163.

¹²⁶ [CMA Heat Networks Market Study- Final Report, 23 July 2018](#).

¹²⁷ [CMA Heat Networks Market Study- Final Report, 23 July 2018](#), paragraph 4.13.

¹²⁸ [CMA Heat Networks Market Study- Final Report, 23 July 2018](#), paragraph 4.12.

¹²⁹ See SGN, [redacted] shows SGN's target of providing energy centres for sites with the ability to provide for adjacent sites, .

¹³⁰ [CMA Heat Networks Market Study- Final Report, 23 July 2018](#), paragraph 2.28.

¹³¹ [CMA Heat Networks Market Study- Final Report, 23 July 2018](#), paragraph 2.29.

¹³² SGN, [redacted].

same document also indicates that there are a notable number of suppliers that operate across the entire value chain, covering all heat network delivery activities.¹³³

116. Given that the SGN/Vital JV intends to operate in both the installation and adoption aspects of heat network delivery,¹³⁴ and that BUUK is also active in both aspects of the delivery of heat networks, the CMA does not consider that a distinction needs to be made between installation and adoption for the purposes of assessing the impact of the Merger.
117. Accordingly, the CMA has assessed the impact of the Merger in the supply of district heat. Any differences in the conditions of competition between installation and adoption are taken into account for the purposes of the competitive assessment to the extent needed.

Conclusion on product scope

118. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- (i) the installation of multi-unit gas connections;
 - (ii) the third party adoption of multi-unit gas connections;
 - (iii) the third party adoption of multi-unit electricity connections; and
 - (iv) the installation and adoption of district heat networks.

Geographic scope

Installation and adoption of gas and electricity connections

119. The Parties submitted that the appropriate geographic frame of reference for the adoption and installation of new gas connections is Great Britain (**GB**)-wide based on the reasons cited by the OFT in *Brookfield/Inexus*.¹³⁵ The Parties also submitted however that there may be some regional elements to competition given that major developers typically tender on a regional basis, some installers are only active regionally, and GDNs only provide connections to their own networks in their designated regions.¹³⁶
120. In *Brookfield/Inexus* the OFT assessed the effects of the transaction at a GB wide level.¹³⁷ Large developers were generally of the view that competition took place at

¹³³ SGN, [§<].

¹³⁴ SGN, [§<]- SGN, with its asset ownership experience, and Vital Energi, with its 'D&B/O&M' experience, aim to bring together 'complimentary skills and capabilities.'

¹³⁵ FMN, paragraph 149.

¹³⁶ FMN, paragraph 149.

¹³⁷ *Brookfield Infrastructure Partners LP/Inexus Group Limited ME/5620/12* (25 October 2012), paragraph 44.

national or GB level for both installation and adoption.¹³⁸ The OFT did also note, however, that one third party indicated that many installers are regionally based and would find it difficult to work outside their regions due to the travelling time for labour and machinery.¹³⁹

CMA assessment

- *Installation*

121. SGN installs utilities connections in Scotland and Southern England only. BUUK installs utilities connections across England, Wales, and Scotland, [redacted].¹⁴⁰
122. The CMA considered internal documents to understand whether BUUK¹⁴¹ analyses the conditions of competition for installation at a regional level. BUUK's internal documents show that BUUK analyses business performance [redacted].¹⁴² Furthermore, [redacted] show that conditions of competition vary by region.¹⁴³
123. This is consistent with third party feedback. One third party indicated that there are different conditions of competition in different regions, stating that it faces different installer competitors in each of the regions it operates and that particular installers like BUUK are more competitive in certain regions than others.¹⁴⁴ While there are installers like BUUK which operate on a national basis,¹⁴⁵ most installers are regionally focussed¹⁴⁶ according to third parties that responded to the CMA's investigation.
124. The CMA therefore believes that, in the round, the evidence available to it indicates that competition mostly takes place on a regional basis, although some larger installers possess the capability and resources to operate across all or most regions.
125. Given that SGN only operates in Scotland and Southern England, the CMA has assessed the impact of the Merger in installation nationally, and also in those particular regions where SGN and BUUK overlap (ie Scotland and Southern England). It was not necessary to reach a conclusion on the geographic frame of

¹³⁸ *Brookfield Infrastructure Partners LP/Inexus Group Limited ME/5620/12* (25 October 2012), paragraph 43. The OFT noted that '(t)wo... developers indicated that the geographic location of the last mile service provider was not at all important' and that '(c)ompetitor third parties indicated that the geographic location of the installer was not important.'

¹³⁹ *Brookfield Infrastructure Partners LP/Inexus Group Limited ME/5620/12* (25 October 2012), paragraph 43.

¹⁴⁰ FMN, paragraphs 73 and 74.

¹⁴¹ SGN's internal documents are limited to the regions where it operates and are therefore less likely to be informative of whether conditions of competition in different regions in GB vary. Hence, the CMA has focussed on BUUK's internal documents to consider whether an installer with GB cross-wide operations (like BUUK) might observe varying conditions of competition in different regions.

¹⁴² See, for example, the following BUUK [redacted] BUUK, [redacted], BUUK, [redacted], and BUUK, [redacted].

¹⁴³ See the following for example: [redacted]. This is also consistent with the Parties' submission that [redacted] (FMN, paragraph 74).

¹⁴⁴ Note of call with Aptus, 18 November 2021, paragraphs 21 and 22.

¹⁴⁵ [redacted].

¹⁴⁶ See [redacted]. Also, for example, Infrastructure Gateway Limited said that it only operates in the East of England and the West Midlands (See Infrastructure Gateway Limited response to CMA installer questionnaire dated 12 January 2022).

reference, since, as set out below, no competition concerns arise on any plausible basis.

- *Third party adoption*

126. BUUK and MUA adopt connections across GB. Furthermore, all third party adopters that responded to the CMA's merger investigation indicated that they operate across GB with most stating that they observe no regional differences in competition. Only a small portion of adopters observed that their competitive strength may differ by region.
127. Other evidence from third parties indicates that it is unlikely that there are regional differences in conditions of competition. All installers that responded to the CMA's questionnaire utilise the same set of adopters across all of the regions where they operate, with most stating that competition does not differ by region.
128. Consistent with this, the CMA notes that BUUK's internal documents do not draw the same regional distinction for adoptions as for installations. For example, one document considers [§<].¹⁴⁷ Another document [§<].¹⁴⁸
129. Based on the above, the CMA therefore believes that competition in third party adoption largely takes place on a GB-wide basis. Accordingly, the CMA has assessed the impact of the Merger in the supply of third party adoptions at a GB level.

Heat networks

130. The Parties submitted that they did not consider it necessary for the CMA to conclude on frame of reference, given competition concerns cannot arise on any plausible basis.¹⁴⁹

CMA assessment

131. The CMA considered whether competition for heat networks takes place on a regional or national basis.
132. The CMA notes that BUUK's heat network business operates across GB¹⁵⁰ and that the SGN/Vital JV intends to build and operate networks in SGN's areas of operation (Scotland and Southern England) where SGN has available landbanks for development,¹⁵¹ but may, as explained in paragraph 175 below, expand into other areas in GB.

¹⁴⁷ BUUK, [§<].

¹⁴⁸ BUUK, [§<].

¹⁴⁹ FMN, paragraph 165.

¹⁵⁰ However, note that [§<] (see FMN, paragraph 74).

¹⁵¹ SGN, [§<].

133. Third party feedback suggests that competition in the supply of heat networks takes place on GB-wide basis. One heat network supplier mentioned that it sees no regional differences in terms competition. While a considerable portion of heat network projects in GB are based in London, this seems to be because of London-specific government planning policies conducive to the growth of heat networks, and not necessarily because of any restrictions on the abilities of suppliers to operate across GB.¹⁵² For example, [X].
134. Accordingly, the CMA has assessed the impact of the Merger in GB.

Conclusion on frame of reference

135. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the installation of multi-unit gas connections on both a GB-wide basis and in SGN's areas of operation (Scotland and Southern England);
 - (b) the third party adoption of multi-unit gas connections on a GB-wide basis;
 - (c) the third party adoption of multi-unit electricity connections on a GB-wide basis; and
 - (d) the installation and adoption of heat networks in on a GB-wide basis.

Assessment of theories of harm

136. The CMA considered the following theories of harm in respect of the Merger:
- (a) horizontal unilateral effects in the installation of multi-unit gas connections on both a GB-wide basis and in SGN's areas of operation (Scotland and Southern England);
 - (b) horizontal unilateral effects in the third party adoption of multi-unit gas connections on a GB-wide basis;
 - (c) horizontal unilateral effects in the third party adoption of multi-unit electricity connections on a GB-wide basis;
 - (d) loss of potential competition in the installation and adoption of heat networks in GB; and
 - (e) vertical effects resulting from input foreclosure of BUUK's rivals by SGN.

¹⁵² For example, [X] said that 'planning conditions mean a greater proportion of heat networks in London' but that there are 'no known geographical differences between competitors' (See [X] response to CMA heat networks questionnaire dated 12 January 2022).

Horizontal unilateral effects

137. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.¹⁵³ Horizontal unilateral effects are more likely when the merging parties are close competitors.¹⁵⁴ The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the following frames of reference:

- (a) the installation of multi-unit gas connections on both a GB-wide basis and in SGN's areas of operation (Scotland and Southern England);
- (b) the third party adoption of multi-unit gas connections on a GB-wide basis;
- (c) the third party adoption of multi-unit electricity connections on a GB-wide basis; and
- (d) the installation and adoption of heat networks in GB.

Horizontal unilateral effects in the installation of multi-unit gas connections on both a GB-wide basis and in SGN's areas of operation (Scotland and Southern England)

138. Both SGN and BUUK install multi-unit gas connections, although SGN is only active in its areas of operation (ie Scotland and Southern England). The CMA therefore assessed how closely SGN and BUUK compete in the installation of multi-unit gas connections on both a GB-wide basis and in SGN's areas of operation, and the competitive constraints they face.

Shares of supply

139. The Parties estimated shares of supply using a combination of publicly available information and data from their internal sales records and competitor monitoring information. Given there is typically a significant time lag between the point at which a contract is won and when installation of a connection completes, shares of supply have been calculated wherever possible based on the point in time at which the contract was awarded (that is, the competitive event), rather than when the installation was carried out.¹⁵⁵

140. The CMA considers that only limited weight can be attached to the Parties estimated shares of supply for the following reasons:

¹⁵³ [CMA129](#), paragraph 4.1

¹⁵⁴ [CMA129](#), paragraph 4.8.

¹⁵⁵ FMN, paragraph 172.

- (a) given that contracts to install new gas connections are generally awarded through competitive tenders, shares of supply may not be a reliable proxy for the competitive strength of different suppliers;
- (b) the unavailability of revenue data means that shares of supply could only be calculated on a volume basis (ie number of connections), although the CMA notes that this approach is consistent with *Inexus*;
- (c) there may be some volatility in the shares of supply as a result of underlying cyclical patterns of demand from developers and the impact of the covid-19 pandemic; and
- (d) the CMA has concerns about the accuracy of the underlying data used to estimate shares of supply in light of various data quality issues acknowledged by the Parties.¹⁵⁶

141. However, the CMA notes that the Parties' estimated shares of supply show that at GB wide level BUUK is the market leader and post-Merger the Parties would have a combined share of 30-40%. See Table 1 below.

Table 1: The Parties' estimate of shares of supply in the installation of new multi-unit gas connections (excluding S10(1)(a) connections) in GB in 2019 and 2020.

<i>Company</i>	<i>Status</i>	<i>Market shares 2019 (%)</i>	<i>Market Shares 2020 (%)</i>
BUUK	IGT	[20-30] [3<]	[30-40] [3<]
SGN	GDN	[0-5] [3<]	[0-5] [3<]
Energetics (Last Mile)	IGT	[0-5] [3<]	[0-5] [3<]
EAL	IGT	[0-5] [3<]	[0-5] [3<]
Murphy	IGT	[0-5] [3<]	[0-5] [3<]
Harlaxton	IGT	[0-5] [3<]	[0-5] [3<]
Fulcrum	UIP	[0-5] [3<]	[0-5] [3<]
Aptus	UIP	[5-10] [3<]	[5-10] [3<]
British Gas	UIP	[5-10] [3<]	[5-10] [3<]
UKPS	UIP	[10-20] [3<]	[10-20] [3<]
TriConnex	UIP	[10-20] [3<]	[5-10] [3<]
Infra Gateway	UIP	[0-5] [3<]	[0-5] [3<]
Clancy	UIP	[0-5] [3<]	[0-5] [3<]
Other UIPS	UIP	[0-5] [3<]	[10-20] [3<]
Other GDNs	GDN	[10-20] [3<]	[10-20] [3<]
Total Gas		100%	100%

Source: FMN, Table 3.

142. The Parties were unable to estimate shares of supply for each of their competitors at a regional level, as publicly available information only covers connections at a national level.¹⁵⁷ However, the Parties provided estimates of their own shares of supply. See Table 2 below.

¹⁵⁶ FMN, paragraph 173.

¹⁵⁷ FMN, paragraph 183.

Table 2: The Parties' estimate of shares of supply in the installation of new multi-unit gas connections (excluding S10(1)(a) connections) in Southern England and Scotland in 2019 and 2020.

Company	Market Shares in Scotland – 2019 (%)	Market Shares in Scotland – 2020 (%)	Market Shares in Southern England – 2019 (%)	Market Shares in Southern England – 2020 (%)
BUUK	[20-30] [≥<]	[10-20] [≥<]	[30-40] [≥<]	[20-30] [≥<]
SGN	[5-10] [≥<]	[10-20] [≥<]	[10-20] [≥<]	[10-20] [≥<]
Others (eg Energetics, EAL, Fulcrum, Aptus, British Gas, UKPS, Triconnex, Harlaxton, Infrastructure Gateway etc)	[60-70] [≥<]	[70-80] [≥<]	[50-60] [≥<]	[50-60] [≥<]

Sources: FMN, Table 4 and Table 5.

143. The Parties' estimates show that at regional level the Parties would have a significant combined share of supply, particularly in Southern England suggesting *prima facie* competition concerns.

Closeness of competition

144. As a preliminary point, the CMA notes the following factors suggest that GDNs and UIPs typically supply connections to different types of development projects, with GDNs generally supplying 'one-off' or small development projects and UIPs focusing on larger development projects:

- (a) GDNs, unlike UIPs, do not participate in tenders for connections and provide connections quotations upon request.¹⁵⁸ Larger development projects are more likely to be competitively tendered.¹⁵⁹
- (b) GDNs, unlike IGTs, are not permitted to include the recovery of any asset value payments made for the adoption of the gas connection when determining their charges. This makes it more difficult for GDNs to be cost-competitive with UIPs (as asset payments, whether by the UIP's affiliated IGT or a third party adopter, reduce the overall cost of installations to the developer).¹⁶⁰
- (c) Conversely, the DLCA generally makes GDNs more attractive on price for one-off connections or very small developments within 23 metres of the GDN's network.¹⁶¹
- (d) GDNs only provide gas connections while UIPs are allowed to and often do offer multiple utility connections as a bundle (eg gas, electricity, water and wastewater and fibre connections).¹⁶² UIPs that responded to the CMA's merger investigation indicated that the overwhelming majority of their

¹⁵⁸ FMN, paragraph 11.

¹⁵⁹ FMN, paragraph 270.

¹⁶⁰ The fact that GDNs cannot recover asset value payments (see paragraph 66 above) may dissuade them from offering any such payment to begin with, making them less competitive in attracting developers' business.

¹⁶¹ See, for example, [≥<].

¹⁶² See, for example, FMN, paragraph 144.

installation work is carried out on a multi-utility basis. Consistent with this, multi-unit developers that responded to the CMA's merger investigation said that their preference is to contract for multi-utility connections;

- (e) Larger developments are also seen as more lucrative by UIPs because they offer them the ability to connect and charge for the installation for multiple units.¹⁶³

145. Consistent with this, project data supplied by the Parties shows that SGN and BUUK generally compete for different types of development project. For 2020, Figure 1 and Figure show that the [%] majority of SGN's gas connections in Scotland and Southern England were for projects of between [%], while [%] BUUK's projects in Scotland, and [%] in Southern England, were for developments of this size. In comparison, the [%] majority of BUUK's connections were for projects [%]. SGN [%]. While there was some [%] overlap in projects of between [%], overall, the data indicates that SGN and BUUK have diverging focuses in terms of project size.

Figure 1: SGN and BUUK connections by project size – Scotland, 2020.

[%].

Source: FMN, Figure 9.

Figure 2: SGN and BUUK connections by project size - Southern England, 2020.

[%].

Source: FMN, Figure 10.

146. The Parties also submitted data that showed that only approximately [%] of quotes submitted by BUUK and [%] of quotes submitted by SGN for development projects in Scotland and Southern England in 2019 and 2020 were for the same development project.¹⁶⁴ The data from the Parties has limitations. For example, some overlaps in some periods would not be caught due to the fact that SGN records data by financial year, while BUUK records data by calendar year.¹⁶⁵ However, the CMA considers that this data is consistent with other evidence received on lack of closeness of competition between the SGN and BUUK.¹⁶⁶

147. The CMA also notes that BUUK and SGN do not mention each other in their internal documents. As can be seen from paragraph 150 below, BUUK's internal documents, instead make reference to other UIPs and IGTs, and do not mention

¹⁶³ See, for example, [%].

¹⁶⁴ FMN, paragraph 315.

¹⁶⁵ The Parties' response to question 15 of RFI2 dated 25 November 2021- see paragraph 74.

¹⁶⁶ Although the quality of the data on which the Parties based their calculations has limitations, it is consistent with other evidence. For example, 'the Parties do not have a full view of the projects where they have been unsuccessful, or which competitors they were bidding against or lost to' (FMN, paragraph 317).

any GDNs (including SGN) and SGN's internal documents do not refer to any other installers (including BUUK).

148. Furthermore, third party feedback indicates that GDNs and IGTs do not compete closely.¹⁶⁷ More specifically, third parties indicated that BUUK and SGN are not close competitors.¹⁶⁸ Only one third party said that BUUK and SGN are in competition with each other, but without indicating whether it considers they compete closely.¹⁶⁹

149. Based on the evidence above, the CMA believes that there are very limited circumstances in which BUUK and SGN compete and that they are, therefore, not close competitors.

Competitive constraints

150. As of January 2022 there are 185 UIPs for gas across the UK.¹⁷⁰ The CMA notes that BUUK's internal documents indicate that it [redacted]¹⁷¹ [redacted].¹⁷² The CMA observed no references to alternative installers in SGN's internal documents.

151. Consistent with this, third party developer respondents to the CMA's merger investigation indicated that they use a large number of alternative installers other than BUUK including in regions where SGN is active. These are Connect It, Energetics, Energy Assets, Phoenix, SSE, and Triconnex. More generally, one large developer indicated that the market for installation is competitive.¹⁷³ No developers expressed any concerns with the Merger.

152. The CMA therefore considers that SGN and BUUK will continue to be constrained by a large number of installers post-Merger.

Conclusion

153. For the reasons set out above, the CMA believes that BUUK and SGN are not close competitors, and that for the limited development projects they do compete for, there are a sufficient number of alternative installers that constrain them. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the installation of new multi-unit gas connections in Scotland and Southern England or GB more generally.

¹⁶⁷ See [redacted]; [redacted] response to question 6 of CMA competitor questionnaire dated 12 January 2022- '...we should imagine there is a level of competition between BUUK and SGN albeit this would be of a different nature to the active competition between IGTs'; [redacted].

¹⁶⁸ See for example, [redacted].

¹⁶⁹ [redacted].

¹⁷⁰ FMN, paragraph 132.

¹⁷¹ BUUK[redacted].

¹⁷² See BUUK, [redacted]; BUUK, [redacted]; BUUK, [redacted]; BUUK, [redacted].

¹⁷³ Note of call with Barratt Homes, 26 November 2021, paragraph 5.

Horizontal unilateral effects in the third party adoption of multi-unit gas connections and multi-unit electricity connections on a GB-wide basis

154. A number of adopters, including BUUK and MUA, adopt both gas and electricity connections (including on a bundled basis). The CMA has therefore assessed the impact of the Merger on third party adoptions of both types of utility together. Where the evidence or analysis applies to just one utility, this has been noted.
155. The CMA assessed whether the Merger may lead to horizontal unilateral effects in the third party adoption of multi-unit gas connections and multi-unit electricity connections on a GB-wide basis. The CMA notes that SGN is active only to a very limited extent in third party adoptions of gas connections¹⁷⁴ and considers that, for the same reasons explained in paragraphs 144 to 149 above, as a GDN it does not compete closely with IGTs. For these reasons the CMA’s assessment has focused on BUUK and MUA.

Shares of supply

156. The Parties submitted estimated shares of supply for SGN, BUUK, MUA¹⁷⁵ and their competitors in the third party adoption of gas connections and electricity connections on a GB-basis in 2019 and 2020 (see **Table 3**). The CMA did not receive sufficient data to enable it to reconstruct shares of supply. However, data received from third parties indicate that the Parties’ estimates are unreliable as there are other suppliers that are active in third party adoptions that are not covered by the Parties’ estimates,¹⁷⁶ [redacted],¹⁷⁷ [redacted] over the same period.

Table 3: GB share of third party adoptions of new multi-unit gas and electricity connections (excluding S10(1)(a) connections), excluding adoptions MUA won from MUC in 2019 and 2020

	Gas market shares – 2019 (%)	Gas market shares – 2020 (%)	Electricity market Shares – 2019 (%)	Electricity market Shares – 2020 (%)
BUUK	[40-50] [redacted]	[20-30] [redacted]	[30-40] [redacted]	[20-30] [redacted]
SGN	[0-5] [redacted]	[0-5] [redacted]	[redacted]	[redacted]
MUA	[0-5] [redacted]	[0-5] [redacted]	[0-5] [redacted]	[0-5] [redacted]
ESP	[30-40] [redacted]	[30-40] [redacted]	[30-40] [redacted]	[20-30] [redacted]
SSE	[redacted]	[redacted]	[0-5] [redacted]	[0-5] [redacted]
Energetics/ Last Mile	[20-30] [redacted]	[30-40] [redacted]	[20-30] [redacted]	[30-40] [redacted]
Fulcrum	[0-5] [redacted]	[0-5] [redacted]	[0-5] [redacted]	[0-5] [redacted]
EAL	[0-5] [redacted]	[0-5] [redacted]	[0-5] [redacted]	[5-10] [redacted]

Source: FMN, Table 10 and Table 11

157. The CMA has therefore placed limited weight on the Parties’ estimates. Nevertheless, the CMA notes that MUA’s estimated share of supply was very small

¹⁷⁴ SGN’s estimated market shares were below [redacted] [0-5%] in 2019 and 2020 respectively.

¹⁷⁵ MUA’s estimated shares of supply do not include adoptions of assets installed by Murphy’s (its jointly controlling parent) which were non-contestable.

¹⁷⁶ [redacted].

¹⁷⁷ [redacted].

and did not exceed [REDACTED] [0-5%] for gas connections in either 2019 or 2020. Although, MUA experienced significant growth for electricity connections between 2019 and 2020, this was from a very low base and was primarily driven by [REDACTED].¹⁷⁸ Data received from third parties confirmed that MUA is a small player relative to other third party adopters.

158. Moreover, data received from third parties indicate that post-Merger there will remain at least four competitors¹⁷⁹ for third party adoptions of gas connections and seven for third party adoptions of electricity connections¹⁸⁰ in addition to the Parties.

Closeness of competition

159. The Parties submitted that SGN's investment in MUA had been considered as an opportunity to [REDACTED].¹⁸¹
160. The CMA considers that SGN's internal documents reflect that while MUA competes [REDACTED] with BUUK, [REDACTED].¹⁸² BUUK is named alongside [REDACTED] other asset adopters [REDACTED].¹⁸³ [REDACTED].
161. Furthermore, the CMA notes that MUA's multi-utility offering is currently narrower than that of BUUK which also offers adoption of other types of assets such as heat networks, fibre connections, and water connections.¹⁸⁴
162. Bidding data submitted by the Parties suggest that BUUK and MUA rarely compete for the same projects. Out of [REDACTED] third party adoption projects by BUUK and [REDACTED] adoption projects by MUA across 2019 and 2020, there were only [REDACTED] distinct third party adoption projects that both IGTs bid for.^{185, 186}
163. While the CMA notes that there are issues regarding the robustness of the methodology used by the Parties to identify overlaps the data is broadly consistent with evidence received from third parties. In particular:
- (a) the majority of installers that responded to the CMA's investigation and used BUUK for third party adoption indicated that they were not aware of MUA as a competitor to BUUK. The only installer that did consider BUUK and MUA to be

¹⁷⁸ FMN, paragraph 256.

¹⁷⁹ These are ESP, Energetics, EAL, and [REDACTED]. Fulcrum is not included in this list as the Parties submitted that they understand that Fulcrum has an exclusive five-year agreement with ESP as adoption partner (FMN, paragraph 301). The CMA understands that in the I&C segment, Fulcrum will work with ESP and will continue to adopt assets, predominately in the small/medium sized market (FY20_Half_Year_Results_final_06012020_v2_for_web (2).pdf).

¹⁸⁰ These are ESP, Energetics, EAL, [REDACTED]. Fulcrum is not for the same reasons explained in footnote 179.

¹⁸¹ FMN, paragraph 62.

¹⁸² SGN, [REDACTED].

¹⁸³ SGN, [REDACTED].

¹⁸⁴ As mentioned in footnote 93, although [REDACTED] notes the potential to expand its offering into these utilities, [REDACTED] and the CMA has not considered this potential overlap further in this decision.

¹⁸⁵ This corresponded to [REDACTED] overlap projects for which BUUK and MUA submitted [REDACTED] and [REDACTED] bids respectively (see FMN, paragraph 309).

¹⁸⁶ FMN, footnote 251. BUUK's and MUA's adoption bids were matched by customer name and postcode.

close competitors also said that the Merger would have little effect on its business; and

- (b) the majority of third party adopters that responded to the CMA's investigation did not suggest that BUUK and MUA are close competitors. Only one competitor said that BUUK and MUA compete closely for the same projects.

164. Overall, in light of the above, the CMA believes that the available evidence indicates that BUUK and MUA are not particularly close competitors.

Competitive constraints

165. As of 28 January 2022, apart from the Parties, there are currently nine IGTs¹⁸⁷ and 12 IDNOs¹⁸⁸ licensed by Ofgem.

166. Feedback from third parties responding to the CMA's merger investigation indicates that at least four¹⁸⁹ⁱⁱ and eight¹⁹⁰ of these competing IGTs and IDNOs respectively are active to a material extent. Installers that rely on third party adopters and that responded to the CMA's merger investigation indicated that there would be sufficient alternative third party adopters post-Merger.

167. As indicated in paragraph 160, MUA's internal documents mention, [redacted], 'key competitors' [redacted],¹⁹¹ which are all active in the third party adoption of gas and electricity connections.¹⁹² Similarly, BUUK's internal documents regularly mention [redacted] and suggest that BUUK faces increasing competition from these suppliers.¹⁹³

168. The CMA believes that in the round, the evidence indicates that post-Merger there will be a sufficient number of alternative third party adopters available to installers for both gas and electricity connections.

Conclusion

169. For the reasons set out above, the CMA believes that BUUK and MUA are not particularly close competitors and that for the limited projects that they do compete

¹⁸⁷ See last page of 'Main document' at [List of all gas licensees including suppliers | Ofgem](#). GTC Pipelines Limited, Independent Pipelines Limited, and Quadrant Pipelines limited, which are BUUK group companies, and Murphy Gas Networks Limited (an MUA subsidiary) are excluded from the list of nine IGTs. ES Pipelines Limited, ESP Connections Limited, ESP Networks Limited, and ESP Pipelines Limited are all part of ESP and are therefore counted as one IGT amongst the nine IGTs referred to.

¹⁸⁸ See first page of 'Main document' at [List of all electricity licensees including suppliers | Ofgem](#). Independent Power Networks Limited and The Electricity Network Company Limited, which are BUUK companies, and Murphy Power Distribution Limited (an MUA subsidiary) are excluded from the list of 12 IDNOs.

¹⁸⁹ Installers that responded to the CMA's questionnaire mentioned four particular IGTs used (ESP, Energy Assets, and Energetics). [redacted].

¹⁹⁰ Installers that responded to the CMA's questionnaire mentioned four particular IDNOs used (ESP, UKPD, Energy Assets, and Energetics). Another [redacted].

¹⁹¹ As explained in footnote 179, Fulcrum will be working with ESP as a partner to adopt assets for the next five years. Fulcrum is therefore currently unlikely to be present a competitive constraint independent of ESP, at least for the next five years.

¹⁹² SGN, [redacted].

¹⁹³ See BUUK, [redacted]; BUUK, [redacted]; BUUK, [redacted]; BUUK, [redacted].

for, there are sufficient alternative third party adopters to constrain them. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to either:

- (a) the third party adoption of multi-unit gas connections in GB; or
- (b) the third party adoption of multi-unit electricity connections in GB.

Loss of potential competition in the installation and adoption of heat networks in GB

170. Unilateral effects may arise from the elimination of potential competition.¹⁹⁴ Potential competition refers to competitive interactions involving at least one firm that has the potential to enter or expand in competition with other firms.¹⁹⁵ To assess this, the CMA considers whether a merger could substantially lessen competition where, absent the merger, entry or expansion by one or both merger firms could have resulted in new or increased competition between them.¹⁹⁶
171. BUUK installs and adopts heat networks. The SGN/Vital JV has been established to install and adopt heat networks.¹⁹⁷ The initial focus of the JV will be to install and adopt heat networks on developments built on landbanks owned by SGN.¹⁹⁸ These projects will not be subject to competition from third parties. However, the SGN/Vital JV may compete to install and adopt heat network projects outside these landbank developments in the future, and so may compete with BUUK in the future. The CMA has therefore assessed whether the Merger may be expected to result in an SLC in relation to a loss of potential competition in the installation and adoption of heat networks in GB.
172. In assessing whether a merger involving a potential entrant/expander leads to a loss of future competition between the merger firms, the CMA will consider evidence on:
- (a) whether either merger firm would have entered or expanded absent the merger; and
 - (b) whether the loss of future competition brought about by the merger would give rise to an SLC, taking into account other constraints and potential entrants.¹⁹⁹
173. In carrying out its competitive assessment, the CMA has considered, in particular, the SGN/Vital JV's pre-existing plans to develop its heat network business and the constraints posed by alternative installers and adopters of heat networks.

¹⁹⁴ [CMA129](#), March 2021, paragraph 5.1.

¹⁹⁵ [CMA129](#), paragraph 5.1.

¹⁹⁶ [CMA129](#), paragraph 5.1.

¹⁹⁷ Vital Energi will remain an independent competitor to the joint venture.

¹⁹⁸ FMN, paragraph 329.

¹⁹⁹ [CMA129](#), paragraph 5.7.

174. The Parties submitted that the SGN/Vital JV is expected to focus on providing district heat solutions to developers using SGN's landbank of development sites for [REDACTED], although it could, in theory, compete with BUUK for third party developer-led projects either alone or in collaboration with another provider in due course.²⁰⁰
175. SGN's internal documents available to the CMA are broadly consistent with the Parties' submissions. For example, one SGN internal document indicates that the initial aim of the SGN/Vital JV is to develop heat networks on landbanks owned by SGN.²⁰¹ Furthermore, the SGN/Vital JV agreement [REDACTED].²⁰² [REDACTED] Vital Energy, which stated that the focus of the SGN/Vital JV is SGN's landbanks, but that third party sites would be considered on a case by case basis.²⁰³
176. SGN's internal documents reflect [REDACTED]. Proactive expansion into installation and adoption on third party sites is [REDACTED].²⁰⁴ Apart from high-level statements in relation to potential expansion to third party sites, the CMA has [REDACTED]. In comparison, the internal documents identify approximately 20 SGN landbanks suitable for development [REDACTED].²⁰⁵
177. The CMA therefore considers that the current focus of the SGN/Vital JV is on SGN's landbanks and that the extent to which the SGN/Vital JV will bid for third party heat network projects is uncertain.
178. Moreover, in the event that the SGN/Vital JV does decide to compete for third party heat network projects in the future, the CMA considers the Merger does not raise competition concerns for the following reasons:
- (a) Although respondents to the CMA's merger investigation regarded BUUK as a credible competitor,²⁰⁶ BUUK's estimated share of supply for district heating is modest ([5-10%] [REDACTED]), and over the last 14 years BUUK has contracted only a total of [REDACTED] district heating schemes.²⁰⁷
 - (b) Post-Merger the Parties will face a number of credible competitors in district heating including British Gas, Dalkia, EDF Energy, E.ON, SSE, Engie, Morrisons, Pinnacle, Perma Pipe, Vattenfall, Veolia and Vital Energi (which will continue to be active in the design and build of heat networks independently of the SGN/Vital JV).²⁰⁸ These suppliers are active in installation (design and

²⁰⁰ FMN, at paragraphs 329 and 330.

²⁰¹ SGN, [REDACTED].

²⁰² SGN, [REDACTED].

²⁰³ Note of call with Vital Energi, 26 January 2022, paragraph 15.

²⁰⁴ SGN, [REDACTED].

²⁰⁵ SGN, [REDACTED].

²⁰⁶ The majority of competitors in heat networks that responded to the CMA's questionnaire named BUUK as a credible provider of heat networks.

²⁰⁷ FMN, at paragraph 25. BUUK submitted that [10-20%][REDACTED] is an upper bound figure, reflecting that as far as it is aware there is no public information on the total number of heat network consumers using district heat solutions. It was able to estimate its share of supply for all heat networks (ie communal and district) using published data, as BEIS publishes the total number of consumers using heat networks. On this basis, BUUK's share of supply is just [0-5%][REDACTED].

²⁰⁸ SGN, [REDACTED].

build) or asset adoption (or both). SGN's internal documents setting out general background on heat networks identify [redacted] as the strongest players. [redacted]. Feedback received from competitors that responded to the CMA's merger investigation also indicated that a large number of third parties are active in the installation and/or adoption of heat networks.²⁰⁹ [redacted].²¹⁰

Conclusion

179. For the reasons set out above, the CMA believes that there are material uncertainties over whether and the extent to which the SGN/Vital JV will compete for heat network projects in the future. Furthermore, to the extent that the Parties may compete in the future, the CMA believes they will be sufficiently constrained by alternative suppliers. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to a loss of potential competition in the installation and adoption of heat networks in GB.

Vertical effects

180. Vertical mergers are those between firms active at different levels in the same industry (ie an upstream firm and a downstream firm), so competition in one market could be directly affected by outcomes in the other.²¹¹

181. Vertical mergers do not involve a direct loss of competition between the merger firms.²¹² However, a common concern is that vertical mergers may result in the foreclosure of current or potential rivals - ie that the merged entity will be able to use its position in one market to harm the competitiveness of its rivals in the other.²¹³ This would weaken the constraints that the merged entity faces and as a result harm competition and therefore customers.²¹⁴

182. In the present case, the CMA considered whether SGN might leverage its position as the incumbent GDN in Scotland and Southern England to provide BUUK with certain advantages to the detriment of BUUK's rivals in the supply of gas connections (downstream), for example by:

- (a) slowing down the speed at which SGN approves connections by BUUK's rivals to its network; or
- (b) quoting a higher price for connections by BUUK's rivals.

²⁰⁹ Third parties referred to alternatives including Vattenfall, E.ON, SSE, Pinnacle, Engie/Equans, British Gas, Scottish Power, Veolia Trent Energy, Perma Pipe, Morrisons, and Dalkia.

²¹⁰ [redacted].

²¹¹ [CMA129](#), paragraph 7.1(a).

²¹² [CMA129](#), paragraph 7.2.

²¹³ [CMA129](#), paragraph 7.2.

²¹⁴ [CMA129](#), paragraph 7.2.

183. The CMA also recognises that SGN might share certain information only with BUUK giving it a competitive advantage over its UIP/IGT rivals.²¹⁵ This could include information that would allow a greater understanding of opportunities, market developments or more efficient pipeline connections, designs etc that other third parties do not have access to when requesting/completing connections. Such information could enable UIPs to implement more efficient connection designs and enable IGTs to make more accurate predictions on future costs and revenues for gas. These concerns have also been considered in this section.
184. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to harm the competitiveness of downstream rivals; (b) its incentive to do so; and (c) the overall effect of the strategy on competition.²¹⁶

Ability

185. The Parties submitted that SGN and BUUK will not have the ability to foreclose BUUK's rivals because:
- (a) SGN has limited opportunity and practical ability to discriminate due to the limited nature of interactions needed between the GDN and UIPs/IGTs for the purposes of successfully applying for a connection to the GDN's;^{217, 218}
 - (b) regulatory protections mean that SGN will be unable to increase prices and reduce quality and service levels for UIPs/IGTs, and prevented from unduly preferencing BUUK;²¹⁹ and
 - (c) Brookfield will only have a 37.5% stake in SGN and will therefore be reliant on the approval of the other jointly controlling SGN shareholders to take discriminatory actions.²²⁰
186. As indicated in paragraphs 48 above, GDNs are the monopoly owners of upstream gas infrastructure in their respective areas of operation. UIPs/IGTs need to apply to GDNs to join their last-mile gas connections to the GDN's incumbent network.²²¹ As such, absent any regulatory oversight, GDNs would have the ability to act in ways which may distort competition between UIPs and IGTs downstream. For example, SGN could leverage its position as GDN in Scotland and Southern England to favour BUUK's applications for connections by subjecting competitors' applications

²¹⁵ [3<].

²¹⁶ [CMA129](#), paragraph 7.10.

²¹⁷ FMN, paragraphs 356 and 357.

²¹⁸ The CMA notes that there are more interactions between GDNs and UIPs/IGTs needed for larger projects (see FMN, paragraph 356). Given the majority of BUUK's projects are for developments [3<] (as discussed in paragraph 145 above), the CMA has placed limited weight on the Parties' argument that SGN has limited ability to discriminate due to the limited nature of interactions.

²¹⁹ FMN, paragraphs 358 and 361.

²²⁰ FMN, paragraph 359.

²²¹ FMN, paragraph 353.

to stricter standards, approving applications by BUUK more quickly, or charging competitors higher connection fees.

187. As described in paragraphs 67 to 69 above, the Gas Act and licence conditions set by Ofgem regulate the behaviour of GDNs. In particular, GDNs have a general duty to grant connections to their network, have a duty to avoid undue preference or undue discrimination in the connection of premises or pipelines operated by IGTs to their network, are subject to quality of service standards (which cover the speed at which connections are made) and must follow specific conditions set by Ofgem when setting charges for connections (which include a requirement not to restrict or distort or prevent competition, and to ensure that no undue preference or undue discrimination is shown by the licensee).
188. This means that SGN will be prohibited from discriminating in favour of BUUK post-Merger when making connections to its network and will be prohibited, for example, from only providing point of connection information to BUUK, providing slower connections or charging higher connection fees to BUUK's rivals without justification.
189. Moreover, post-Merger, Brookfield will only hold a minority shareholding (37.5%) in SGN. The remaining shares in SGN will be held by OTPP (37.5%) and OMERS (subsequently GIP) (25%). Brookfield would therefore need the approval of other jointly controlling SGN shareholders to favour BUUK. For the reasons set out below, the other shareholders would have no incentive to allow SGN to favour BUUK (and for the reasons set out below would have an incentive to prevent SGN from doing so). This would also limit Brookfield's ability to use its shareholding to favour BUUK.

Incentive

190. The Parties submitted that BUUK will not have the incentive to engage in any form of foreclosure strategy of its rivals, particularly in light of the regulatory consequences of breaching the Gas Act and its operating licence conditions.²²² Furthermore, the Parties submitted that Brookfield will be constrained by the other jointly controlling shareholders, which will have no incentive to permit any foreclosure strategy at the expense of SGN's upstream sales, as they would not benefit from any foreclosure strategy favouring BUUK's downstream sales.²²³
191. The CMA notes that any breach by a GDN or an IGT of its obligations under the Gas Act or its licence may result in enforcement action by Ofgem, such as, financial penalties, modifications to the licence, and orders.²²⁴ Such penalties and orders are also published.²²⁵

²²² FMN, paragraph 366.

²²³ FMN, paragraph 367.

²²⁴ See section 28 of the Gas Act.

²²⁵ See sections 29(2) and 30A(7) of the Gas Act.

192. [§<].²²⁶ However, the CMA considers that the risk of enforcement could act as an effective deterrent, limiting the incentive for any discriminatory behaviour by SGN in favour of BUUK.
193. In particular, the CMA notes that SGN's other shareholders have no economic interest in BUUK and therefore no incentive to allow SGN to favour BUUK, especially if this risks financial penalties or other enforcement action. The CMA therefore considers that these shareholders would have a strong incentive to prevent SGN from discriminating against BUUK's rivals.
194. The CMA therefore considers that the incentive to engage in discriminatory behaviour to the detriment of BUUK's UIP and IGT rivals will be limited.

Effect

195. As set out above, the CMA considers that SGN would have limited ability to engage in discriminatory behaviour given its regulatory obligations and the structure of ownership in SGN. To the extent that SGN might engage in some instances of discrimination, the CMA considers that these would likely be limited in scope such that they would not result in substantial harm to overall competition in the downstream market. The CMA considers that any systematic discrimination vis-à-vis BUUK's rivals would be unlikely to evade detection by Ofgem and be more likely to result in action by the other controlling shareholders.
196. Accordingly, the CMA considers that the effect of any attempted strategy by Brookfield to reduce the competitiveness of BUUK's IGT and UIP rivals through foreclosure by SGN will be limited.

Conclusion

197. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to either the installation of multi-unit gas connections in Scotland and Southern England or more generally on a GB-wide basis, or the third party adoption of multi-unit gas connections in Scotland and Southern England.

BARRIERS TO ENTRY AND EXPANSION

198. Entry, or expansion of existing firms, 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.²²⁷

²²⁶ [§<].

²²⁷ [CMA129](#), from paragraph 8.40.

199. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

THIRD PARTY VIEWS

200. Third party comments have been taken into account where appropriate in the competitive assessment above.

DECISION

201. Consequently, 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.

202. The Merger will therefore not be referred under section 33(1) of the Act.

Naomi Burgoyne
Director, Mergers
Competition and Markets Authority
1 March 2022

ⁱ ‘Adoption responsibilities include asset management and maintenance and charging property owners for such services’ should read ‘Adoption responsibilities include asset management and maintenance and charging licensed energy suppliers for such services’.

ⁱⁱ The following text in footnote 189 ‘Installers that responded to the CMA’s questionnaire mentioned four particular IGTs used (ESP, Energy Assets, and Energetics)’ should read ‘Installers that responded to the CMA’s questionnaire mentioned three particular IGTs used (ESP, Energy Assets, and Energetics)’