

# Anticipated acquisition by Macquarie Infrastructure and Real Assets (Europe) Limited and British Columbia Investment Management Corporation of a 60% shareholding in the gas transmission and gas metering business of National Grid plc

## Decision on relevant merger situation and substantial lessening of competition

**ME/7004/22**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 22 November 2022. Full text of the decision published on 29 December 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. Pursuant to an acquisition agreement signed on 27 March 2022, Luppiter Bidco Limited (**Bidco**), which is jointly owned by British Columbia Investment Management Corporation (**BCI**) and Macquarie Infrastructure and Real Assets (Europe) Limited (**MIRAEL**) (ultimately controlled by Macquarie Group Limited (**Macquarie**)), has agreed to acquire a 60% shareholding in the gas transmission and gas metering business of National Grid plc (**National Grid**) (**National Grid Gas**) (the **Merger**). National Grid Gas, Macquarie and BCI are together referred to as the Parties.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of MIRAEL (and Macquarie), BCI and National Grid Gas is an enterprise;

that each of MIRAEL (and Macquarie as its ultimate owner) and BCI will cease to be distinct from National Grid Gas as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3. Macquarie and National Grid Gas are both active in the gas sector in the UK. BCI is not active in the energy sector in the UK.
4. National Grid Gas's core activities of relevance to the CMA's merger investigation are:
  - (a) National Grid Gas is the licensed owner and operator of the gas national transmission system (**NTS**) in Great Britain. As the transmission owner (**TO**) and system operator (**SO**) of the NTS, National Grid Gas owns, builds and operates the NTS, provides new connections to the NTS and has day-to-day responsibility for balancing supply and demand on the NTS.
  - (b) National Grid Gas, through National Grid Metering (**NGM**), manages a portfolio of traditional gas meters.
  - (c) Through its Pipelines Maintenance Centre (**PMC**), National Grid Gas provides certain specialist services with respect to new customer connections. These services include flow stopping; 'hot-tap' connection; welding and fabrication; non-destructive testing and pressure testing; mains laying; construction, design and management. National Grid Gas's PMC also supplies certain emergency and non-emergency asset maintenance services.
5. Macquarie's core activities of relevance to the CMA's merger investigation are:
  - (a) Macquarie, through its asset management division, is part of a consortium of investors that owns Cadent Gas Limited (**Cadent**). Cadent is the licensed owner and operator of four of the eight gas distribution networks (**GDNs**) in Great Britain.
  - (b) Macquarie owns Corona Energy and Macquarie Bank, which are both licensed gas shippers and suppliers in Great Britain.<sup>1</sup>
  - (c) Macquarie, through its specialised and asset finance division, manages a portfolio of smart and traditional gas and electricity meters (**Macquarie Metering**).

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<sup>1</sup> Corona Energy is a supplier of electricity and gas to UK I&C customers and a wholly owned subsidiary of Macquarie Bank. Corona Energy (through various group entities) and Macquarie Bank are licensed gas shippers and suppliers in Great Britain. See [List of all gas licensees including suppliers | Ofgem](#).

6. These activities give rise to a number of horizontal overlaps and vertical relationships between Macquarie and National Grid Gas. The CMA considered each of these in turn in order to assess the competitive effects of the Merger:
- (a) National Grid Gas and Cadent both provide connections to gas networks in Cadent's licensed area. The evidence here showed: (i) only a very small number of customers can choose between connecting to the NTS (owned and operated by National Grid Gas) and Cadent's GDNs and (ii) the Parties have limited ability to flex the factors that affect customer choice (where it exists). This is consistent with the fact that no customers or GDN operators indicated that the Parties compete with each other for connections. Therefore, the CMA believes that the Parties do not currently compete with each other to win customers to any material degree.
  - (b) The CMA considered the vertical relationship between National Grid Gas as TO and Cadent as the owner and operator of four GDNs in Great Britain. The CMA considered whether there is competition between GDN operators to win new customers. However, the CMA found that only a very small number of customers have a choice between connecting to Cadent and other GDNs. Furthermore, GDN operators have limited ability to flex the factors that affect customer choice. The CMA has received no evidence that GDN operators compete with each other to win customers. Accordingly, the CMA considers that any post-Merger decisions that might favour Cadent would not impact competition downstream.
  - (c) The CMA considered a further vertical relationship, in relation to National Grid Gas's activities (through its PMC) as a supplier of asset maintenance services to independent gas transporters (**IGTs**) and IGTs' provision of new connections in Cadent's licensed area. The evidence shows IGTs have a range of alternative providers to National Grid Gas for these services. As such, the CMA believes that the Merged Entity will have no ability to foreclose rival IGTs in Cadent's licensed geographic area.
  - (d) The CMA also considered the vertical relationship between National Grid Gas's activities (through its PMC) as a supplier of specialist services for new connections and rival suppliers of new connection works in Cadent's licensed area. The evidence indicates that for most connection works, rivals do not require these specialist services and, where they do, there are alternative providers. As such, the CMA believes that the Merged Entity will have no ability to foreclose rival providers in Cadent's licensed geographic area.
  - (e) The CMA considered the vertical relationship between National Grid Gas as SO and TO of the NTS and Macquarie's gas shippers active in the wholesale

(including trading) and retail supply of gas in Great Britain, and assessed whether the Merger could result in the partial foreclosure of rival gas shippers through National Grid Gas: (i) restricting or worsening the terms of access to the NTS; (ii) discriminating in favour of Macquarie when trading with gas shippers; and (iii) discriminating in favour of Macquarie through use of its additional balancing tools in the event of a national gas supply emergency (**NGSE**). The CMA found that the Merged Entity would have limited ability to do so in practice in given:

- (i) With regard to the potential for National Grid Gas to restrict or worsen the terms of access to the NTS: (1) access to the NTS must be granted in accordance with published methodologies approved by the Office of Gas and Electricity Markets (**Ofgem**) and underpinned by obligations under statute, licence conditions and the uniform network code (**UNC**); and (2) access is generally granted through capacity auctions managed and operated by Xoserve, an industry body jointly owned by National Grid Gas and the four GDN operators in Great Britain.
  - (ii) With regard to the potential for National Grid Gas to favour Macquarie when trading with gas shippers: (1) National Grid Gas only trades gas in order to maintain the integrity of the NTS and its trading activity is subject to regulation; (2) the vast majority of trading with shippers is anonymous at the point of execution; and (3) trading by National Grid Gas constitutes a very small proportion of overall trading activity.
  - (iii) With regard to the potential for National Grid Gas to favour Macquarie in the context of an NGSE: National Grid Gas's actions in the event of an NGSE must be taken in accordance with pre-established published procedure and would be subject to oversight by an independent Network Emergency Coordinator (**NEC**) and the Government.
- (f) Finally, the CMA considered the horizontal relationship between National Grid Gas and Macquarie in the supply of metering services in Great Britain. The evidence here showed that the Parties do not currently compete with each other in the provision of metering services to any material degree and that there are alternative suppliers to constrain the Merged Entity post-Merger.
7. The CMA therefore does not believe that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**).
  8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

# ASSESSMENT

## PARTIES

### Acquirer

1. Macquarie is a global provider of banking, financial, advisory, investment and funds management services, listed on the Australian Stock Exchange.<sup>2</sup> Macquarie, through its managed funds, is active in the gas sector in the UK, in particular through:
  - (a) Macquarie's asset management division's shareholding in Cadent, the owner and operator of four gas GDNs in Great Britain;
  - (b) Corona Energy, a supplier of electricity and gas to UK I&C customers, and Macquarie Bank;<sup>3</sup> and
  - (c) Macquarie's specialised and asset finance division's gas and electricity metering business.
2. The turnover of Macquarie in the financial year ended 31 March 2021 was approximately £[<] million worldwide and £[<] million in the UK.<sup>4</sup>
3. BCI is an agent of the Government of British Columbia in Canada. BCI makes investments across a range of asset classes on behalf of public sector clients in British Columbia, including fixed income, public equities, private equity, infrastructure, renewable resources, real estate and commercial mortgages.<sup>5</sup> BCI does not have any activities or interests in companies active in the UK energy sector.<sup>6</sup>
4. The turnover of BCI in the financial year ended 31 March 2021 was approximately £[<] million worldwide and £[<] million in the UK.<sup>7</sup>

### Target

5. National Grid Gas is the gas transmission and gas metering business of National Grid. The turnover of National Grid Gas in the financial year ended 31 March 2021

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<sup>2</sup> FMN, paragraph 3.6.

<sup>3</sup> Corona Energy is a wholly owned subsidiary of Macquarie Bank. Corona Energy (through various group entities) and Macquarie Bank are licensed gas shippers and suppliers in Great Britain. FMN, footnote 86. See [List of all gas licensees including suppliers | Ofgem](#).

<sup>4</sup> FMN, paragraph 6.1

<sup>5</sup> FMN, paragraph 3.13.

<sup>6</sup> FMN, paragraph 3.14.

<sup>7</sup> FMN, paragraph 6.1.

was approximately £1,131 million worldwide, almost all of which was generated in the UK.<sup>8</sup>

## TRANSACTION

### Transaction structure and post-Merger governance

6. As set out in paragraph 1, pursuant to an acquisition agreement signed on 27 March 2022, Bidco, which is jointly owned by MIRAEL and BCI, has agreed to acquire a 60% shareholding in National Grid Gas.<sup>i</sup>
7. To put this into effect, Bidco will acquire a 60% shareholding in the entity which currently owns National Grid Gas, GasT Topco Limited (**GasT Topco**).<sup>9</sup> National Grid will retain the remaining 40% shareholding in GasT Topco.<sup>10</sup>
8. Bidco and National Grid will enter into a shareholders' agreement in relation to GasT Topco, which sets out the post-Merger governance arrangements for GasT Topco (and, accordingly, National Grid Gas) (the **GasT Topco SHA**).<sup>11</sup> The GasT Topco SHA provides, in particular, for the following.
  - (a) Aside from certain reserved matters, all strategic commercial decisions of GasT Topco and its group (such as budget, business plan and appointment of senior management) will be determined by way of simple majority at board meetings.<sup>12</sup>
  - (b) Certain reserved matters require a higher level of support at board meetings or support from shareholders in order to be passed, in particular:
    - (i) approval of a business plan or budget which is materially adverse to the prevailing business plan requires the approval of a 'super majority' of the board of directors, i.e. directors which together hold more than 80% of the total board voting rights; and
    - (ii) a number of matters require the approval of National Grid and Bidco (in their capacity as shareholders of GasT Top Co) before they can be implemented, including the initial business plan and budget.<sup>13</sup>

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<sup>8</sup> FMN, paragraph 6.1.

<sup>9</sup> FMN, paragraph 2.3.

<sup>10</sup> FMN, paragraph 2.3.

<sup>11</sup> FMN, paragraph 2.7

<sup>12</sup> FMN, paragraph 2.7

<sup>13</sup> FMN, paragraphs 2.16 – 2.17.

- (c) The GasT Topco board will comprise two directors appointed by National Grid and five directors appointed by Bidco.<sup>14</sup> This board structure will be replicated in the main operating company sitting under GasT Topco, with the addition of two sufficiently independent directors, a CEO and a CFO.<sup>15</sup> Each director will have a single vote at each board meeting, other than the CEO and CFO of the main operating company who shall not vote.<sup>16</sup>
9. As Bidco will be the shareholder in GasT Topco, as opposed to MIRAEL and BCI holding their shareholdings directly, the governance arrangements related to Bidco are also relevant to the post-Merger governance of GasT Topco (and, accordingly, National Grid Gas). In particular, the governance arrangements for Bidco are relevant to the level of control which each of MIRAEL and BCI will exercise (via their subsidiary, Bidco) over National Grid Gas post-Merger (see paragraphs 10 to 12 below).
10. In this regard, Bidco will be owned by a holding company in which MIRAEL will indirectly hold a [X]% shareholding and BCI will indirectly hold a [X]% shareholding (**Consortium HoldCo**).<sup>17</sup> The Consortium HoldCo board will comprise [X] directors appointed by BCI and [X] directors appointed by MIRAEL, in line with their respective shareholdings.<sup>18</sup> Consortium HoldCo will act as a holding company for Bidco and will make decisions in respect of how Bidco will act as a shareholder of GasT Topco (and, accordingly, National Grid Gas).<sup>19</sup> When voting on any relevant decisions at GasT Topco level, Bidco and directors appointed by Bidco will act unanimously in accordance with any decisions made by Consortium HoldCo.<sup>20</sup> Accordingly, the decisions made at the Consortium HoldCo level will have a direct impact on the governance of National Grid Gas.
11. As regards how this governance will operate, MIRAEL and BCI intend to enter into a shareholders' agreement in relation to Consortium HoldCo (the **Consortium SHA**). The Consortium SHA will provide, in particular, for the following as regards National Grid Gas:
- (a) Aside from certain reserved matters, all matters to be decided by the Consortium HoldCo board shall be decided by simple majority at board meetings;<sup>21</sup>

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<sup>14</sup> FMN, paragraph 2.8.

<sup>15</sup> FMN, paragraph 2.9.

<sup>16</sup> FMN, paragraph 2.12.

<sup>17</sup> FMN, paragraphs 2.21 - 2.22

<sup>18</sup> FMN, paragraph 2.26(e)

<sup>19</sup> FMN, paragraph 2.26(b)

<sup>20</sup> FMN, paragraphs 2.26(c)–(d)

<sup>21</sup> Annex 08.04 to the FMN

- (b) Certain reserved matters can be vetoed by directors representing [X]% of the share capital, including material changes to business plans and financing plans and in most circumstances, the removal or replacement of the GasT Topco CEO or CFO;<sup>22</sup>
  - (c) Certain further reserved matters can be vetoed by directors representing [X]% of the share capital; and <sup>23</sup>
  - (d) Certain further reserved matters, which require shareholder approval, can be vetoed by shareholders representing [X]% of the share capital.
12. Accordingly, with a [X]% shareholding in Consortium HoldCo, BCI will have an effective veto over all of these reserved matters.

### Reviews by other authorities

13. The Parties informed the CMA that the Merger was also reviewed by the European Commission (**EC**). The EC issued a clearance decision on 30 June 2022.<sup>24</sup>
14. The Merger was reviewed by the Secretary of State for Business, Energy and Industrial Strategy under the National Security and Investment Act 2021 (a clearance decision was issued on 25 August 2022), and by Ofgem under the unbundling provisions set out at sections 8C – 8Q of the Gas Act 1986 (the **Gas Act**).<sup>25</sup>

### PROCEDURE

15. The CMA's mergers intelligence function identified the Merger as warranting an investigation.<sup>26</sup>

### JURISDICTION

16. Each of Macquarie, MIRAEL, BCI and National Grid Gas is an enterprise.
17. As set out in paragraph 1, Bidco is jointly owned by MIRAEL (which is ultimately owned by Macquarie) and BCI.<sup>27</sup> Bidco has agreed to acquire a 60% shareholding

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<sup>22</sup> FMN, paragraphs 2.27(a) and 2.28 and Annex 08.04 to the FMN. Other reserved matters include [X].

<sup>23</sup> FMN, paragraph 2.27 (b)-(c) and Annex 08.04 to the FMN. [X].

<sup>24</sup> FMN, paragraphs 7.1 to 7.4.

<sup>25</sup> Ofgem, [certification under the ownership unbundling requirements of Gas Act 1986](#), and accompanying [decision](#) 15 November 2022.

<sup>26</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2022, paragraphs 6.4-6.6.

<sup>27</sup> MIRAEL indirectly holds a [X]% shareholding in Bidco and BCI indirectly holds a [X]% shareholding.



in National Grid Gas. National Grid will retain a 40% shareholding in National Grid Gas.<sup>28</sup>

18. To conclude that a transaction will lead to enterprises ceasing to be distinct for the purposes of the Act, the CMA must find that an acquirer obtains a sufficient level of control over the activities of another enterprise.<sup>29</sup> The Act distinguishes between three levels of control: material influence; de facto control; and a controlling interest. De facto control is likely to include situations where the acquirer has in practice control over more than half of the votes actually cast at shareholder meetings. However, other factors may be relevant and there is no 'bright line' between factors which might give rise to material influence and those giving rise to de facto control.<sup>30</sup>
19. As explained at paragraph 10 above, Bidco is controlled by Consortium HoldCo. In particular, Bidco's actions as a shareholder of GasT Topco and the actions of Bidco appointed directors are controlled by Consortium HoldCo. As a result, the nature of control exercised by each of MIRAEL (and ultimately therefore Macquarie) and BCI over National Grid Gas as a result of the Merger is determined by (i) the shareholdings and related rights of MIRAEL and BCI in Consortium HoldCo and (ii) the shareholdings and related rights of Bidco and National Grid in GasT Topco, as described above, in light of the following.
  - (a) MIRAEL (and ultimately Macquarie) will gain at least material influence<sup>31</sup> over National Grid Gas. This is in light of MIRAEL's [ $\times$ ] % shareholding and board representation at the Consortium HoldCo level, together with Bidco's majority shareholding and board representation in GasT Topco, which give MIRAEL the ability to influence National Grid Gas's commercial behaviour and veto a wide range of significant commercial decisions as regards National Grid Gas.
  - (b) BCI will gain material influence over National Grid Gas. This is in light of BCI's [ $\times$ ] % minority shareholding and minority board representation at the Consortium HoldCo level, together with Bidco's majority shareholding and

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<sup>28</sup> National Grid has also granted Bidco the option to acquire (at Bidco's discretion) the remaining 40% of GasT Topco's share capital. FMN, paragraph 2.5. As the option (should it be exercised) will be part of a separate transaction post-Merger and there is no certainty as to when and whether Bidco will acquire further shares, the CMA's assessment of the level of control each Party will gain or retain post-Merger has been made on the basis of Bidco acquiring a 60% shareholding only. As noted in the CMA's guidance, further acquisitions which increase material influence to a level of de facto control or a controlling interest or increase de facto control to a controlling interest may produce a new relevant merger situation for the purposes of the Act (see [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2022, paragraph 4.36).

<sup>29</sup> Section 26 of the Act and [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2022, paragraphs 4.16 – 4.35.

<sup>30</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), January 2022, paragraph 4.33.

<sup>31</sup> The CMA has considered the impact of the specific rights held by MIRAEL in the context of this Merger. It has not been necessary to conclude on the precise legal classification of these rights (ie whether this amounts to material influence or de facto control) since the CMA's finding on whether the Merger would give rise to an SLC would not be affected by that characterisation. MIRAEL will not have a controlling interest in National Grid Gas because it will not have a majority shareholding in National Grid Gas. Its indirect shareholding in National Grid Gas will be [ $\times$ ] %.

board representation in GasT Topco, which give BCI the ability to influence National Grid Gas's commercial behaviour and veto a wide range of significant commercial decisions as regards National Grid Gas.

(c) In light of its 40% shareholding, board representation and veto rights in respect of certain reserved matters at the GasT Topco level, National Grid will retain material influence over National Grid Gas after the Merger.

20. Therefore, a result of the Merger, National Grid Gas, MIRAEL (and Macquarie as its ultimate owner) and BCI will cease to be distinct. However, National Grid will retain material influence over National Grid Gas.
21. The UK turnover of National Grid Gas exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
22. 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.
23. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 28 September 2022 and the statutory 40 working day deadline for a decision is therefore 22 November 2022.

## COUNTERFACTUAL

24. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>32</sup>
25. The Parties submitted that the relevant counterfactual should be the prevailing conditions of competition.<sup>33</sup> The CMA received no evidence to support a different counterfactual. Therefore, the CMA believes the conditions of competition to be the relevant counterfactual.

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<sup>32</sup> See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.12.

<sup>33</sup> FMN, paragraph 11.

## BACKGROUND

### The physical transportation of gas

26. In Great Britain, the transmission and distribution of gas – ie the physical transportation of gas from producers to end-users – are ‘natural monopoly’ activities, regulated by GEMA, operating through Ofgem.<sup>34</sup> A single gas transmission system (ie the NTS) provides the infrastructure to transport gas to the GDNs through which gas is distributed to end-users.
27. In broad terms, the physical transportation of gas in Great Britain comprises the following stages:
- (a) gas enters the NTS through offshore gas reception terminals, liquefied natural gas (**LNG**) importation terminals and interconnectors from other countries;<sup>35</sup>
  - (b) the gas is transported by National Grid Gas, as the TO of the NTS, through the NTS – which is comprised of high-pressure pipes and compressor stations – to GDNs or users directly connected to the NTS (typically larger users, such as power generators); and <sup>36</sup>
  - (c) where gas is transported to a GDN, gas exits the NTS at offtakes (or ‘exit points’) and enters the GDN at high pressure. GDN operators decrease the pressure on entry and transport the gas through low-pressure pipes to directly connected users (domestic and smaller scale users) or licensed local gas transportation networks operated by IGTs (**IGT networks**) (through which gas is in turn supplied to end-users).<sup>37</sup>

### The wholesale and retail supply of gas

28. The physical transportation of gas in Great Britain by the TO, GDN operators and IGTs, as outlined above – is distinct from the wholesale and retail supply of gas.
29. Broadly speaking, the wholesale supply of gas encompasses:

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<sup>34</sup> The gas supply chain (including the transmission and distribution of gas) in Northern Ireland is regulated by the Northern Ireland Utility Regulator. As National Grid Gas and Macquarie’s activities in the gas supply chain only overlap in Great Britain, the decision focuses on Great Britain.

<sup>35</sup> Gas entering the NTS may also include gas previously held in storage.

<sup>36</sup> National Grid Gas plc, [Annual Report and Accounts 2021/2022](#), page 2.

<sup>37</sup> GDNs are licensed monopolies. While IGT networks also distribute gas and compete with GDNs to provide new connections in the GDN’s licensed geographic area, they sit downstream from the GDN (ie they are connected to the GDN directly or indirectly via another IGT network).

- (a) the production and importation of gas for sale into the wholesale trading market; and
  - (b) the bilateral and exchange trading between producers and importers, shippers, suppliers,<sup>38</sup> other traders and some end-users in the wholesale trading market.<sup>39</sup>
30. In previous cases, the CMA has considered the geographic scope of the wholesale supply of gas to be Great Britain or the UK.<sup>40</sup>
31. Retail suppliers compete to sell gas to end-users, who pay the retail supplier for the cost of the gas and for its transportation. The shipper (who may be part of the same company as the retail supplier) pays transportation charges to the relevant transporter (ie the TO, GDN or IGT network operator, as applicable).
32. The CMA has previously identified separate markets for the retail supply of gas by reference to type (eg domestic or I&C) and size (eg small and medium-sized enterprise or microbusiness) of customer.<sup>41</sup> The CMA has considered the geographic scope of the retail supply of gas (to both domestic customers and microbusinesses) to be Great Britain.<sup>42</sup>

## The regulation of the gas supply chain

33. In Great Britain, the supply of gas – including the production, physical transportation, and supply of gas to end-users – is regulated by Ofgem on behalf of GEMA.
34. The Gas Act requires those active in the gas supply chain to be licensed unless exemptions apply. In particular, separate licences are required to:

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<sup>38</sup> Under the applicable regulatory regime (see paragraph 32), separate licences are required to engage in the ‘shipping’ of gas (meaning buying gas from wholesale suppliers and paying for its transportation) and the ‘supply’ of gas (meaning selling to end-users). The CMA has previously referred to ‘retail supply’ as encompassing both shipping and supply to end-users, noting that in practice, both ‘shipping’ and ‘supply’ functions are often carried out within the same company. See the CMA’s [Energy Market Investigation Final Report](#), 24 June 2016, paragraphs 2.13 and 2.62. Consistent with this, while some third-party respondents to the CMA’s merger investigation were only active in the wholesale supply of gas in Great Britain (eg through producing or importing gas for sale on the wholesale market), the majority were also active in the retail supply of gas in Great Britain. Third-party responses to the CMA’s gas shipper questionnaire, questions 2 to 5. Note of CMA call with a third-party on 21 September 2022, paragraphs 1 and 2.

<sup>39</sup> See, eg, the CMA’s [Energy Market Investigation Final Report](#), 24 June 2016, paragraphs 3.6, 3.13 and 3.14, and M.8358 – *Macquarie / National Grid / Gas Distribution Business of National Grid* (16 March 2017), paragraph 17.

<sup>40</sup> CMA’s [Energy Market Investigation Final Report](#), 24 June 2016, paragraph 3.18. The European Commission has previously considered the geographic market likely to be national (UK-wide) or the UK and the Republic of Ireland, see, eg, M.8358 – *Macquarie / National Grid / Gas Distribution Business of National Grid* (16 March 2017), paragraph 17.

<sup>41</sup> CMA’s [Energy Market Investigation Final Report](#), 24 June 2016, paragraphs 3.23 – 3.28 and 3.46. The European Commission has in previous decisions also segmented the retail supply of gas by type and size of end-customer, see, eg, M.8358 – *Macquarie / National Grid / Gas Distribution Business of National Grid* (16 March 2017), paragraph 18.

<sup>42</sup> CMA’s [Energy Market Investigation Final Report](#), 24 June 2016, paragraph 3.45. The European Commission has previously considered retail supply of gas to different end-customer segments to be national (ie UK-wide) in scope, see, eg, M.8358 – *Macquarie / National Grid / Gas Distribution Business of National Grid* (16 March 2017), paragraph 18.

- (a) transport gas (the licence allows gas transporters – the TO, GDN operators and IGTs – to convey gas through pipes to any premises within the area authorised by the licence);
- (b) ship gas (the licence allows the licensee to arrange with a gas transporter for gas to be introduced into, conveyed through, or taken out of a pipeline system operated by that gas transporter); and
- (c) supply gas (the licence allows the licensee to supply gas to end-users). A licence may allow for the supply to non-domestic or domestic premises, or both.<sup>43</sup>

35. All licences include standard licence conditions for that activity as determined by Ofgem and/or the Secretary of State. In addition, licensees are required to comply with specified industry codes in accordance with conditions of their licence. The principal industry code in relation to the supply of gas in Great Britain is the UNC, which defines the rights and responsibilities of users of gas transportation networks in Great Britain and forms the basis of commercial contract arrangements between gas transporters and users of the NTS (shippers).<sup>44</sup> Modifications to the UNC require Ofgem’s approval.<sup>45</sup> If a licensee breaches its licence, it faces penalties and ultimately risks losing its licence.<sup>46</sup>

### **Gas networks**

36. National Grid Gas, as the licensed TO and SO of the NTS,<sup>47</sup> and the licensed GDN operators hold monopoly positions in their respective licensed areas, and are subject to ‘full’ price controls set by Ofgem.<sup>48</sup> These price controls determine the amount of revenue National Grid Gas and GDN operators can earn from users and stipulate the level of performance they are funded to deliver.<sup>49</sup> The price controls also include performance incentives (including financial and reputational

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<sup>43</sup> Separate licences are also required for interconnection (in which the licence allows the licensee to participate in the operation of a gas interconnector). FMN, paragraphs 12.9 to 12.10. A list of all gas licensees in Great Britain as at 26 October 2022 is available on Ofgem’s website, at [List of all gas licensees including suppliers | Ofgem](#).

<sup>44</sup> Licensed gas transporters are required to develop the UNC pursuant to SSC A11(6) of their transporter’s licenses and to develop their own code incorporating references to the UNC, such that common arrangements apply across Great Britain. See [SSC Part A, UNC Introduction](#) and summary of [Individual Network Codes | Joint Office of Gas Transporters \(gasgovernance.co.uk\)](#).

<sup>45</sup> Ofgem has a duty to approve or reject proposed modifications to the UNC based on whether Ofgem considers that the modification would meet the objectives of the UNC. Ofgem submission to the CMA dated 12 October 2022, paragraph 47.

<sup>46</sup> Ofgem response to the CMA’s questions of 19 October 2022.

<sup>47</sup> The TO is responsible for ensuring the reliable and secure delivery of gas across Great Britain while the SO has overall responsibility for ensuring that the supply and demand of gas are balanced within the NTS.

<sup>48</sup> [Network price controls 2021-2028 \(RIIO-2\) | Ofgem](#).

<sup>49</sup> See [About RIIO-T2](#) (applicable to National Grid Gas as TO and SO of the NTS) and [About RIIO-GD2](#) (applicable to GDN operators) on Ofgem’s website.

incentives).<sup>50</sup> Each year, National Grid Gas and GDN operators must report to Ofgem on their performance against the price control.

37. Only National Grid Gas, as the licensed TO and SO, is permitted provide connections to the NTS, whereas new connections to the GDN are subject to competition. There is competition both to install new connections and to adopt them (ie own and operate the constructed network infrastructure). Utility infrastructure providers (**UIP**) compete to carry out installation works and IGTs (which may be part of the same companies as UIPs) compete to adopt new infrastructure.
38. Of particular relevance to the CMA's merger investigation, with regard to new connections to gas networks, the CMA notes the following.
- (a) The Gas Act places a statutory obligation on the TO and the GDN operators to
    - (i) connect premises within their authorised area pursuant to any reasonable customer request and avoid undue preference or discrimination in making connections; and
    - (ii) connect premises within a specified distance (23m) of a main.<sup>51</sup>
  - (b) National Grid Gas's transporter licence requires National Grid Gas to:
    - (i) publish its charges and a charging methodology (including charges for new connections to the NTS). Charges to new connections customers must be in accordance with this methodology and any modifications to the methodology approved by Ofgem.
    - (ii) prepare an individual network code setting out the terms on which transportation arrangements may be entered into to, including the methodology and principles for determining the charges for connections to the NTS.
  - (c) Similarly, Cadent's transporter licence requires Cadent to:
    - (i) develop a connections charging methodology that must be reviewed annually to ensure it meets relevant objectives.<sup>52</sup> Charges to new connections customers must be in accordance with this methodology,

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<sup>50</sup> National Grid Gas's SO incentives are described in its 'Supporting information document', available here [System operator incentives | National Grid Gas](#).

<sup>51</sup> Sections 9 and 10 of the Gas Act.

<sup>52</sup> Standard Condition (**SC**) 4B(1) of Cadent's gas transporter licence. These objectives include facilitating competition in the supply of gas and ensuring that Cadent does not show any undue preference or discrimination towards those operating pipeline systems in relation to connections to Cadent's network.

which must be approved by Ofgem (and any subsequent changes to it must be reported and justified to Ofgem); and<sup>53</sup>

(ii) meet certain timing and quality of service standards.<sup>54</sup>

(d) National Grid Gas is also required to comply with the Uniform Network Code. National Grid Gas's individual network code noted above incorporates terms of the UNC.

39. More broadly, National Grid Gas's and Cadent's transporter licences include obligations to conduct their respective transportation activities in a way that does not confer commercial advantage on themselves, certain related entities or, in the case of National Grid Gas, other market participants.<sup>55,56</sup>

### ***Gas shippers and the NTS***

40. Licensed gas shippers buy gas from producers/importers and sell it to the licensed gas supplier.<sup>57</sup> To this end, they pay National Grid Gas transportation charges to transport gas from the producers/importers to the gas supplier (their customer or licensed group entity) via the NTS.<sup>58</sup> In order to contract with National Grid Gas to ship gas via the NTS, shippers must be party to the UNC.<sup>59</sup>

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<sup>53</sup> FMN, paragraph 15.25.

<sup>54</sup> Standard Special Condition (**SSC**) D10 of Cadent's gas transporter licence. For example, Cadent must procure that the majority (90%) of specified quotations for gas connections are issued within a given number of days.

<sup>55</sup> SSC A6 of National Grid Gas's transporter licence requires National Grid Gas to conduct its transportation business in a way that does not confer unfair commercial advantage on National Grid Gas, its affiliates or related undertakings or any gas shipper, supplier or GDN, while SSC A33 requires National Grid Gas to (i) ensure market participants do not access confidential information and (iii) conduct its transportation business in a way that does not restrict, prevent or distort competition in the supply shipping or production of gas, any trading business or the supply of meter-related services. FMN, paragraph 15.24(f), [Standard Special Condition](#) part A6, ss 1 and 2, and part A33, ss 3.

<sup>56</sup> Licence Condition A6 of Cadent's transporter licence requires Cadent to act in the manner best calculated to ensure that neither Cadent, nor any affiliate or related undertaking of Cadent obtains any unfair commercial advantage (however Cadent does not consider that National Grid Gas would be an affiliate post-Merger). FMN, paragraph 15.25(d), [Standard Special Condition](#) part A6, ss 1 and 2.

<sup>57</sup> As noted above (see footnote 36) while as a regulatory matter, industry players require separate licences in order to 'ship' gas (ie to make arrangements with the gas transporter for gas to introduced into, transported through and/or taken out the transporter's network) and to 'supply' gas to end-users, in practice both 'shipping' and 'supply' functions are often carried out within the same group.

<sup>58</sup> FMN, Annex 09.01, page 23.

<sup>59</sup> Ofgem submission to the CMA dated 12 October 2022, paragraph 47. [End to End Balancing Guide.pdf \(nationalgrid.com\)](#), October 2017, page 3.

## Access to the NTS

41. National Grid Gas has a monopoly function in granting access to the NTS by way of allocating entry and exit capacity rights to shippers. These rights allow shippers to flow gas on to and off the NTS.<sup>60</sup>
42. Capacity entry and exit rights are generally allocated via capacity auctions on the Gemini System, which is owned by National Grid and managed and operated by Xoserve, an industry body jointly owned by National Grid Gas and the four GDN operators in Great Britain.<sup>61,62</sup> Shippers obtain:
  - (a) entry capacity by making bids on the Gemini Entry system through a number of auctions;<sup>63</sup> and
  - (b) exit capacity by making applications or bids on the Gemini Exit system, through a number of application windows and auctions.<sup>64</sup>
43. Under the terms of its licence, National Grid Gas is obligated to release a baseline level of capacity and to allocate capacity according to capacity release methodology statements, which must be approved by Ofgem following consultation with shippers and other industry participants.<sup>65</sup> Allocation of capacity must also be in accordance with the terms of the UNC (Section B).<sup>66</sup>
44. There are also financial incentives in the price control framework for National Grid Gas as SO to incentivise National Grid Gas to maximise the release of capacity and minimise the costs of capacity constraints on the NTS.<sup>67</sup>

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<sup>60</sup> A shipper needs to buy one unit of capacity in order to flow one unit of energy onto the system and this is known as the 'ticket to ride' principle. [Entry capacity | National Grid Gas](#). A shipper can input or offtake gas from the NTS without corresponding entry and exit rights, however there are financial penalties for doing so.

<sup>61</sup> See [Gemini System \(xoserve.com\)](#) and [Funding, governance and ownership \(xoserve.com\)](#).

<sup>62</sup> Capacity auctions for capacity rights at interconnection points (between different countries) take place on the PRISMA platform operated by PRISMA, an industry body set up by a group of European transmission system operators in order to provide a capacity booking platform for use at interconnection points. See [Start \(prisma-capacity.eu\)](#) and [EU Codes QA - v2 0 \(nationalgrid.com\)](#).

<sup>63</sup> Gemini Entry is used for all entry capacity related activities to ensure shippers have booked the right amount of space to bring gas onto the NTS. Gemini Entry is also used for by shippers for all energy balancing activities (the amount of gas shippers intend to flow in and out of the NTS). [Gemini System \(xoserve.com\)](#)

<sup>64</sup> Gemini Exit is used for all exit capacity related activities (to ensure shippers have the right amount of space booked to bring gas off the NTS). [Gemini System \(xoserve.com\)](#).

<sup>65</sup> [Special Condition 9.18](#) of National Grid Gas's transporter licence requires it to use all reasonable endeavours to release a baseline level of entry and exit capacity ('obligated' capacity). See [Entry Capacity Release Methodology Statement](#) (9 May 2022) and [Exit Capacity Release Methodology Statement](#) (10 June 2022).

<sup>66</sup> Accordingly, these terms are reflected in National Grid Gas's capacity release methodology and charging statements. See [Gas Transmission Transportation Charges](#) (1 October 2022).

<sup>67</sup> Under this framework, Ofgem sets financial incentives for National Grid Gas to meet agreed targets with respect to capacity constraint management and other performance factors (including residual balancing, see paragraph 47). National Grid Gas is required to report on its performance against these targets (see, eg, [Gas Incentive Performance Quarterly Report](#), July-September 2022).



## *Balancing the NTS*

45. In order to ensure that gas is always available, and the NTS gas pressures stay within safe and acceptable limits, shippers are incentivised to ‘balance’ their capacity on the NTS on a daily basis.<sup>68</sup> One of the means by which shippers can ensure they balance their position is by trading on gas markets linked to the national balance point (**NBP**) (see paragraph 48 to 51).
46. If this fails, National Grid Gas as SO may step in as the ‘residual balancer’ of the NTS. If National Grid Gas considers that the NTS is likely to move outside of the acceptable range of balance, either during the day or by the end of the day, it may step in to take action.<sup>69</sup> Short-term actions include the following.
- (a) ‘Market-balancing’ actions, through which National Grid Gas attempts to change the physical flows of gas into or from the NTS by trading on the On the Day Commodity Market (**OCM**) to buy gas to cover an overall negative imbalance (a ‘short’ system) or sell gas to reduce an overall positive imbalance (a ‘long’ system).<sup>70</sup> The OCM is the only market National Grid Gas can use for gas trading in its role as residual balancer.<sup>71</sup>
  - (b) Location-specific actions, such as – where there are location-specific constraints on the system – buying back the rights to flow gas<sup>72</sup> or carry out location-specific gas trades (via location trades on the OCM).
  - (c) Agreeing contracts for flexibility gas (known as ‘operating margins’) as a short-term solution to system problems normally experienced at the extremities of the system.<sup>73</sup>
47. National Grid Gas is required, pursuant to its transporter licence, to conduct its activities as residual balancer in accordance with Section D of the UNC.<sup>74</sup> There are financial incentives in the price control framework for National Grid Gas as SO

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<sup>68</sup> The UNC provides financial incentives for gas shippers to (i) ‘balance’ their use of the NTS – ie to ensure that the amount of gas they input into the NTS matches the amount of gas taken out of the NTS by their customers – on a daily basis; and (ii) accurately forecast, through their nominations to National Grid Gas, how much gas they will flow on and off the NTS. [End to End Balancing Guide.pdf \(nationalgrid.com\)](#), October 2017, page 8.

<sup>69</sup> [End to End Balancing Guide.pdf \(nationalgrid.com\)](#), October 2017, page 7.

<sup>70</sup> [End to End Balancing Guide.pdf \(nationalgrid.com\)](#), October 2017, page 10.

<sup>71</sup> [End to End Balancing Guide.pdf \(nationalgrid.com\)](#), October 2017, page 5.

<sup>72</sup> National Grid Gas may ask shippers for offers to surrender certain capacity if a constraint is forecast or experienced. Capacity surrender is managed via the Gemini Exit system.

<sup>73</sup> Operating margin gas is only used on rare occasions as an interim measure to maintain NTS pressures in the immediate period following operational stresses – and, as such, avoid the need to declare a deficit emergency – when the market actions are not expected to be delivered in time to keep the system within its safe operational limits. [End to End Balancing Guide.pdf \(nationalgrid.com\)](#), October 2017, page 10.

<sup>74</sup> Available here [Transportation Principal Document | Joint Office of Gas Transporters \(gasgovernance.co.uk\)](#).

to balance supply and demand on each day and to minimise the impact it has on the market when it has to trade gas to balance the NTS.<sup>75</sup>

### *Trading*

48. National Grid Gas only trades gas in order to maintain the integrity of the NTS.<sup>76</sup> The NBP is a virtual location originally created by the Uniform Network Code to support the balancing of the system (and through which all gas passes for the purpose of accounting and balancing).
49. The NBP also evolved to become a trading point (the balancing market). The OCM, operated by the ICE Endex exchange as appointed by National Grid, is the balancing market for Great Britain. It enables anonymous trading between market participants and trading is cleared on the day. There are three types of trades that market participants can make on the OCM, as follows.
  - (a) Title trades, which transfer the title of gas between market participants and take place at the NBP. Title trades may result in a change to the physical flow rate of gas on the NTS. The vast majority of OCM trades are title trades.
  - (b) Physical trades, in which the bid originator will identify the location(s) at which gas will be delivered, or taken, after the trade has taken place. This is the physical transfer of gas between market participants. It will change the physical flow rate of gas on the NTS.
  - (c) Locational trades, which specify a single entry-point or exit point at which gas is bid for/offered. It will change the physical flow rate of gas on the NTS.
50. Market participants can also trade gas outside of the OCM, through over-the-counter (**OTC**) trades (ie trades via various channels such as the telephone, email and electronic trading systems).
51. National Grid Gas also buys energy used to operate the NTS and other energy that cannot be charged to consumers or accounted for in the measurement and allocation process (such energy is referred to as '**shrinkage**'). National Grid Gas carries out trading for shrinkage purposes with counterparties that have signed an 'NBP15' contract on gas markets (including but not limited to the OCM).<sup>77</sup> National Grid Gas is required, pursuant to its transporter licence, to conduct its role in managing shrinkage in accordance with Section N of the UNC.<sup>78</sup> There is a

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<sup>75</sup> See footnote 66.

<sup>76</sup> [End to End Balancing Guide.pdf \(nationalgrid.com\)](#), October 2017, page 3.

<sup>77</sup> Once a counterparty signs an NBP15 contract, National Grid Gas can/has the option to trade with them. FMN, paragraphs 12.62 and 20.20.

<sup>78</sup> Available here [Transportation Principal Document | Joint Office of Gas Transporters \(gasgovernance.co.uk\)](#).

reputational incentive scheme, under which gas procurement costs are reported and compared to benchmark costs, which are based on forecast and actual volumes and market prices.<sup>79</sup>

### **Network gas supply emergencies**

52. If National Grid Gas were unable to maintain a supply – demand balance on the NTS using its normal system balancing tools (see paragraph 46), National Grid Gas would request the NEC<sup>80</sup> to declare an NGSE.<sup>81</sup>
53. The declaration of an NGSE provides National Grid Gas with access to additional balancing tools for use in restoring a supply – demand balance. These emergency tools will be used, under the authorisation of the NEC, to try to maintain supplies to domestic gas users as long as possible and include requesting additional gas supplies be delivered to the NTS, or requiring gas users, starting with the largest industrial users, to stop using gas (referred to as **load shedding**).<sup>82</sup> National Grid Gas's actions in the context of an NGSE are carried out in accordance with its published pre-established procedure for an NGSE, which is prepared in accordance with the UNC and the NEC's safety case.<sup>83</sup> Under the GSMR, licensed gas transporters (including National Grid Gas) and other industry participants are required to comply with the safety case.<sup>84</sup>
54. Any material changes to the NEC safety case are subject to acceptance by the HSE,<sup>85</sup> which has oversight of the NEC safety case through audit and reporting requirements.

### **National Grid Gas's PMC services**

55. Through its PMC, National Grid Gas provides certain specialist services with respect to new customer connections. These services are generally provided on a

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<sup>79</sup> To this end, National Grid Gas is required to publish a Gas Volume Methodology setting out the gas volumes used in calculating benchmark costs, and the prices used to determine best case, worse case, and average costs (see [Gas Volume Methodology \(3 March 2022\)](#)) and forecast gas volumes (see [Seasonal and quarter gas volumes for 2023/24](#)).

<sup>80</sup> Under Regulation 3(1) of the Gas Safety (Management) Regulations 1996 (**GSMR**), there is a legal requirement for there to be an NEC when there is more than one gas transportation company operating on the gas network, as is currently the case. In its role as SO of the NTS, National Grid Gas appoints the NEC, an appropriately qualified individual with full independence and autonomy in discharging their obligations under the GSMR. Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraphs 9-11.

<sup>81</sup> Defined under Regulation 2(1) of the GSMR as 'an emergency endangering persons and arising from a loss of pressure in a network or any part thereof'. An NGSE may be caused by unforeseen circumstances, such as pipeline or equipment failure, or where system demand exceeds either total supply or planned system capacity (see [Network Gas Supply Emergencies \(NGSE\) | National Grid Gas](#)).

<sup>82</sup> See [Network Gas Supply Emergencies \(NGSE\) | National Grid Gas](#).

<sup>83</sup> See the E1 [Procedure for Network Gas Supply Emergency \(T/PM/E/1\)](#) (May 2021). As set out in the Procedure, a potential or actual NGSE, the Department for Business, Energy & Industrial Strategy (**BEIS**) would form their emergency response team in accordance with the BEIS National Emergency Plan for Gas and Electricity.

<sup>84</sup> See [A guide to the Gas Safety \(Management\) Regulations 1996 Guidance on Regulations \(hse.gov.uk\)](#).

<sup>85</sup> Regulation 4(2) of the GSMR.

subcontracted basis via a 'main works contractor' (typically a UIP) who undertakes the connection works on behalf of the connecting customer. These services include flow stopping; 'hot-tap' connection; welding and fabrication; non-destructive testing and pressure testing; mains laying; construction, design and management.<sup>86</sup>

56. Further, the PMC provides maintenance services, including planned and emergency specialist gas services internally to the NTS, and externally to GDNs/IGTs, as further described in paragraph 86 below. All external work undertaken by the PMC falls under the provisions of transmission services to other gas transporters and third parties, consent for which is given by Ofgem under Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing) and Standard Special Condition A39 (Indebtedness). The services offered externally by PMC are not regulated through National Grid Gas's price control contained in its licence. The consented work is undertaken pursuant to commercial contracts between PMC and relevant third-party customers.<sup>87</sup>

## **Metering services**

57. National Grid Gas (through NGM) and Macquarie (through Macquarie Metering) are both active in the supply of metering services.
58. Metering services fall into one of three categories:<sup>88</sup>
- (a) MAP services, under which suppliers purchase meters from meter manufacturers and rent them to retail energy suppliers, typically over a 10 to 15 year period;
  - (b) MAM/MOP services, under which suppliers provide meter installation and maintenance services; and
  - (c) MDC services which involve physical meter reading and data collection/aggregation services.
59. In previous cases, the CMA has found that MAP services, MAM/MOP services and MDC services are not substitutable. It has left open whether these services should be sub-segmented into (i) services for smart meters and traditional meters; and (ii) services for electricity meters and gas meters, although it has found some degree of supply-side substitutability between these categories of meter.<sup>89</sup> It has also left open

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<sup>86</sup> FMN, paragraph 12.56.

<sup>87</sup> FMN, paragraphs 12.52(a) to (d).

<sup>88</sup> For further details, see ME/50767/19, *Calvin Capital UK Holdings Ltd / BV Holdings Ltd*, paragraphs 32-39 and ME/6935/21, *National Grid Holdings One plc / PPL WPD Investments Limited*, paragraph 90.

<sup>89</sup> See ME/50767/19, *Calvin Capital UK Holdings Ltd / BV Holdings Ltd*, paragraph 62 and ME/6935/21, *National Grid Holdings One plc / PPL WPD Investments Limited*, paragraph 92-95 and 97.

whether services should be segmented by customer type (ie domestic or I&C), although it has noted that there appear to be some differences in competitive conditions for the two segments.<sup>90</sup> In previous cases, the CMA has considered the geographic scope of the supply of metering services to be Great Britain.<sup>91</sup>

60. The Parties only overlap in the supply of MAP services in Great Britain for traditional gas domestic meters.<sup>92</sup>
61. Traditional gas meters are currently being phased out and replaced by smart meters under the Smart Meter Implementation Programme (**SMIP**). Energy suppliers are responsible for rolling out the SMIP.<sup>93</sup> As of June 2022, traditional gas meters made up around 50% of all domestic gas meters.<sup>94</sup> Current forecasts indicate that 85% of all domestic meters will be replaced with smart meters by the end of 2025.<sup>95</sup>
62. The Parties submitted that energy suppliers' primary focus is on obtaining smart meters in order to meet their obligations under the SMIP, and that demand for traditional domestic gas meters is declining rapidly.<sup>96</sup> Macquarie estimates that [90-100]% of meters for which it started to provide MAP services in 2019 were smart meters (whether electric or gas), increasing to [90-100]% in 2021.<sup>97</sup> The declining demand for traditional gas meters was confirmed by third-party respondents to the CMA's merger investigation.<sup>98</sup>
63. Metering activities do not themselves require a licence.<sup>99</sup> However, National Grid Gas holds the position of the National Meter Manager, providing a Backstop Meter Provider of Last Resort (**BMPoLR**) service pursuant to its licence. This requires National Grid Gas to comply with any reasonable request by a relevant GDN operator to provide, install and maintain a traditional gas domestic meter.<sup>100</sup> The

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<sup>90</sup> See ME/6935/21, [National Grid Holdings One plc / PPL WPD Investments Limited](#), paragraphs 96 and 97.

<sup>91</sup> See ME/50767/19, [Calvin Capital UK Holdings Ltd / BV Holdings Ltd](#) paragraphs 42 to 54 and ME/6935/21, [National Grid Holdings One plc / PPL WPD Investments Limited](#), paragraphs 114-117.

<sup>92</sup> CMA assessment of Annex 14.01 to the FMN. There is no overlap between the Parties in the supply of MAP services for electricity meters, smart meters or meters for I&C customers. There is also no overlap in the provision of other types of metering service (ie MAM/MOP or MDC).

<sup>93</sup> See Smart Meter Rollout: Open letter on Energy Suppliers' Delivery of the Rollout and Regulatory Obligations, Ofgem, 30 March 2021. At the start of 2022, a new 4-year rollout obligation commenced which imposes binding annual installation targets on all suppliers (Gas Supply Licence SLC 33A). A failure to achieve the binding annual installation targets is a breach of a supplier's licence. Suppliers are also subject to an obligation to take all reasonable steps to install a compliant smart meter wherever a meter is replaced or where a meter is installed for the first time (e.g. in new premises) (Gas Supply Licence SLC 33.7)

<sup>94</sup> See [Smart meters in Great Britain, quarterly update June 2022: statistical bulletin](#).

<sup>95</sup> Parties' response to CMA questions (metering) of 24 October 2022, paragraph 5.2.

<sup>96</sup> Parties' response to CMA questions (metering) of 24 October 2022, paragraphs 5.1 and 5.2.

<sup>97</sup> Annex 14.01 to the FMN.

<sup>98</sup> Third-party responses to CMA's metering competitor questionnaire. Third-responses to CMA's metering customer questionnaire.

<sup>99</sup> Ofgem submission to the CMA dated 12 October 2022, paragraph 22.

<sup>100</sup> SSC B7.

BMPoLR duty was introduced to improve the provision of metering services during the transition to smart meters.<sup>101</sup>

## COMPETITIVE ASSESSMENT

64. In assessing an anticipated merger, the CMA is required to consider whether it is or may be the case that the Merger may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.<sup>102</sup> The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a transaction and should not be viewed as a separate exercise.<sup>103</sup> It involves identifying the most significant competitive alternatives available to customers of merger parties and includes the sources of competition to merger parties that are the immediate determinants of the effects of a transaction.<sup>104</sup>
65. The CMA will typically start its assessment of relevant markets with the relevant products of the merger firms.<sup>105</sup> In identifying what other significant competitive alternatives should be included in the relevant market, the CMA will pay particular regard to demand-side factors.<sup>106</sup>
66. In some cases, there may be no need for the CMA's assessment of competitive effects of a transaction to be based on a highly specific description of any particular market.<sup>107</sup> This is because the evidence gathered and analysed as part of the competitive assessment, captures the competitive dynamics more fully than formal market definition.<sup>108</sup> In this case, the CMA assessed competitive dynamics relevant to: (i) the supply of new connections to gas networks (ii) the wholesale (including trading) and retail supply of gas; and (iii) the supply of metering services in Great Britain.
67. As part of its competitive assessment, the CMA has identified the most important constraints on the Parties' behaviour in each of these areas and considers that these constitute the relevant frames of reference for the CMA's assessment of the Merger. In light of this analysis in the competitive assessment below, the CMA has assessed whether it is or may the case that the Merger may be expected to result in an SLC as a result of:

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<sup>101</sup> Ofgem submission to the CMA dated 12 October 2022, paragraph 23.

<sup>102</sup> Section 33(1) of the Act.

<sup>103</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.1.

<sup>104</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.2.

<sup>105</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.6.

<sup>106</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.6 and 9.13.

<sup>107</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.5.

<sup>108</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 9.2.

- (a) horizontal unilateral effects in the supply of new connections to gas networks in Cadent’s licensed geographic area;<sup>109</sup>
- (b) vertical effects in the supply of new connections to gas networks as a result of total or partial foreclosure of other GDN operators in Great Britain;<sup>110</sup>
- (c) vertical effects in the supply of new connections to gas networks as a result of total or partial foreclosure of IGTs in Cadent’s licensed geographic area;<sup>111</sup>
- (d) vertical effects in the supply of new connections works as a result of total or partial foreclosure of rival suppliers of new connection works in Cadent’s licensed geographic area;<sup>112</sup>
- (e) vertical effects in the wholesale and retail supply of gas in Great Britain<sup>113</sup> as a result of partial foreclosure of rivals to Macquarie’s gas shippers;<sup>114</sup> and
- (f) horizontal unilateral effects in the supply of MAP services in Great Britain.<sup>115</sup>

**Horizontal unilateral effects in the supply of new connections to gas networks in Cadent’s licensed area**

- 68. 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 without needing to coordinate with its rivals.<sup>116</sup>
- 69. National Grid Gas supplies new connections to the NTS and Cadent supplies new connections to its GDNs. The CMA therefore assessed whether it is or may the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of new connections to gas networks in Cadent’s

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<sup>109</sup> As Cadent only supplies new connections to gas networks in its licensed geographic area, the CMA focussed its assessment on this area.

<sup>110</sup> The CMA considered whether there is competition between GDN operators to provide new connections across Great Britain, taking into account the fact that each GDN operator’s connections activities are limited to its licensed geographic area.

<sup>111</sup> As Cadent only supplies new connections to gas networks in its licensed geographic area, the CMA focussed its assessment on this area.

<sup>112</sup> As Cadent only supplies new connections works in its licensed geographic area, the CMA focussed its assessment on this area.

<sup>113</sup> As noted above, National Grid Gas and Macquarie’s activities in the gas supply chain only overlap in Great Britain, and the decision therefore focuses on Great Britain.

<sup>114</sup> Through: (i) restricting or worsening the terms of access to the NTS; (ii) discriminating in favour of Macquarie when trading with shippers; and (iii) discriminating in favour of Macquarie in the event of a network gas supply emergency (an NGSE).

<sup>115</sup> See footnote 111.

<sup>116</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 4.1.

licensed geographic area. As Cadent does not supply new connections outside its licensed area, there is no overlap between the Parties in the rest of Great Britain.

70. The Parties submitted that there is no realistic prospect of the Merger resulting in an SLC in this regard, given:
- (a) only a small number of customers have a choice between connecting to the NTS and a GDN;<sup>117</sup>
  - (b) the Parties do not actively compete for new connections to their respective networks (and, consistent with this, the Parties are not aware of any instance where they were both asked to provide a connection offer to the same customer);<sup>118</sup> and
  - (c) the provision of new connections is subject to comprehensive regulatory protections covering price, quality and service.<sup>119</sup>
71. The CMA's starting point was to assess whether and to what extent the Parties currently compete with each other to supply new connections to gas networks. In its assessment, the CMA considered: (i) the extent to which customers have a choice between connecting to the NTS or a GDN in practice;<sup>120</sup> (ii) for any customers that do have a choice, the factors that influence their decision on which network to connect to for a particular project; and (iii) the extent to which the Parties can and do flex their offers having regard to those factors in order to encourage customers to connect to their network rather than the other Party's network.
72. With respect to each of these questions, the CMA found the following.
- (a) There are very few customers that have the choice of connecting to the NTS or a GDN in practice. All GDN operators that responded to the CMA's merger investigation indicated that the number of customers that have a choice between connecting to the NTS or a GDN is very small given factors such as the different pressures at which these networks operate.<sup>121</sup> Ofgem also confirmed that it is rare for a customer to have the option to connect to either the NTS or a GDN.<sup>122</sup>

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<sup>117</sup> FMN, paragraph 15.21.

<sup>118</sup> FMN, paragraph 15.22.

<sup>119</sup> FMN, paragraphs 15.23 – 15.26.

<sup>120</sup> The CMA also considered the extent to which there is choice between connecting to the NTS and the IGT networks within Cadent's licensed geographic area. Third parties indicated that IGT networks connect at considerably lower pressure thresholds relative to the NTS, and that customers are unlikely to have a choice of connecting to the NTS or an IGT network.

<sup>121</sup> Third-party responses to the CMA's GDN operator questionnaire, questions 4 and 5.

<sup>122</sup> Ofgem submission to the CMA dated 12 October 2022, paragraph 66.



- (b) Even where a customer may in principle have the option to connect to either network, customers and GDN operators indicated that the decision on which network to connect to would likely be influenced by a range of factors including location (ie distance from the relevant network), network capacity, cost and lead times.<sup>123</sup> Customers and GDN operators indicated that this would further limit the instances in which connections to the NTS and GDN networks would be alternatives in practice. This is consistent with Ofgem’s view.<sup>124</sup>
- (c) Existing regulation restricts the ability of National Grid Gas and the GDN operators to flex their offers and, therefore, to compete with each other.
  - (i) In relation to price, National Grid Gas and the GDN operators are required to follow a charging methodology that is approved by Ofgem when setting prices for new connections (see paragraph 38), leaving limited scope to flex charges to attract new connections. All GDN operators that responded to the CMA’s merger investigation indicated that the charging methodology limits their ability to influence the cost of a connection in order to attract customers.<sup>125</sup> One GDN operator noted that GDN operators are prohibited from discriminating between customers and any negotiation on cost could be seen as breaching that obligation.<sup>126</sup>
  - (ii) In relation to quality and other aspects of service that customers may value, both Parties are subject to licence conditions that set timescales for connection services.<sup>127</sup>
  - (iii) Other factors that are important to customer choice, such as distance to the network, are outside the Parties’ control.
- (d) Consistent with this, no customers indicated that they engaged in any form of negotiation with the Parties,<sup>128</sup> and none of the GDN operators that responded to the CMA’s merger investigation said they had engaged in competition with respect to price (or other factors) to attract a customer to their network instead of the NTS.<sup>129</sup>

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<sup>123</sup> Third-party responses to the CMA’s gas network customer questionnaire, question 5 and third-party responses to the CMA’s GDN operator questionnaire, question 4.

<sup>124</sup> Ofgem submission to the CMA dated 12 October 2022, paragraph 66.

<sup>125</sup> Third-party responses to the CMA’s GDN operator questionnaire, questions 4e and 6c.

<sup>126</sup> Third-party response to the CMA’s GDN operator questionnaire.

<sup>127</sup> FMN paragraph 15.25 c (ii) and Note of call with GDN operator on 19/08/2022, paragraph 20.

<sup>128</sup> Third-party responses to the CMA’s gas network customer questionnaire, question 7.

<sup>129</sup> Third-party responses to the CMA’s GDN operator questionnaire, question 8.

- (e) The CMA has not identified any evidence of competition between the Parties for new connection customers in the Parties' internal documents.<sup>130</sup>
- (f) The evidence above is consistent with a lack of concern expressed by all GDN operators and customers that responded to the CMA's merger investigation.

73. For the reasons set out above, the CMA believes that only a very small number of customers can choose between connecting to the NTS or Cadent's GDNs and that the Parties have limited ability to flex the factors that affect customer choice (where it exists). This is consistent with the fact that no customers or GDN operators indicated that the Parties compete with each other in this way. Therefore, the CMA believes that the Parties do not currently compete with each other to win customers to any material degree. 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 the supply of new connections to gas networks in Cadent's licensed geographic area.

### **Vertical effects in the supply of new connections to gas networks as a result of total or partial foreclosure of other GDNs in Great Britain**

74. There are a number of vertical relationships between National Grid Gas and Cadent as a GDN operator. National Grid Gas is responsible for infrastructure works on the NTS that impact the GDNs. Through its PMC, National Grid Gas also provides an emergency response service (CEME) and other non-emergency asset maintenance services to GDNs.
75. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer. The concern with an input foreclosure theory of harm is that the merged entity may use its control of an important input to harm its downstream rivals' competitiveness, for example by refusing to supply the input (total foreclosure) or by increasing the price or worsening the quality of the input supplied to them (partial foreclosure). This might then harm overall competition in the downstream market, to the detriment of customers.
76. The Parties submitted there is no realistic prospect of an SLC in this regard given the following.
- (a) There would not be a commercial incentive for National Grid Gas to discriminate in favour of Cadent in relation to infrastructure works, CEME services or asset maintenance activities, given that GDNs are regulated

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<sup>130</sup> This is consistent with the Parties' submission that they are not aware of any instance where they were both asked to provide a connection offer to the same customer. FMN, paragraph 15.22.

monopolies, and therefore there would be no advantage conferred to Cadent by discriminating in this way.<sup>131</sup>

- (b) Any discrimination by National Grid Gas in relation to infrastructure works, would be in breach of its licence and the various regulatory provisions as set out above (see paragraphs 36-39). Moreover, the nature of the commissioning process for infrastructure works, which is heavily standardised and regulated with oversight from Ofgem, would preclude discriminatory conduct.<sup>132</sup>

- 77. The CMA's approach to assessing input foreclosure is to analyse (a) the ability of the merged entity to foreclose competitors, (b) its incentive to do so, and (c) the overall impact of the strategy on competition downstream.<sup>133</sup>
- 78. In this case, the CMA first considered whether there is competition between GDN operators to win new connections customers. This is because if GDN operators do not compete to win customers, any decisions that National Grid Gas might take to favour Cadent could not impact on competition downstream and therefore give rise to an SLC.
- 79. In assessing whether and to what extent different GDN operators compete for customers, the CMA considered: (i) the extent to which customers have the choice of connecting to different GDNs in practice; (ii) for those customers that do have a choice, the factors that influence their decision about which network to connect to for a particular project; and (iii) the extent to which GDNs can and do flex their offers having regard to those factors in order to encourage customers to connect to their network rather than another GDN.
- 80. With respect to each of these questions, the CMA found the following.
  - (a) There are very few customers that have the choice of connecting to different GDNs in practice. All GDN operators that responded to the CMA's merger investigation indicated that location is the primary factor which influences the choice of which GDN to connect to. As such, all GDN operators considered the number of customers that would have a choice between GDNs is very small, and would only occur where a customer is located on the boundary between different GDNs' licensed areas.<sup>134</sup> This is also consistent with customer submissions indicating that location is an important factor in deciding which

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<sup>131</sup> FMN, paragraph 19.52, paragraph 19.41]

<sup>132</sup> FMN, paragraph 19.53 and 19.54.

<sup>133</sup> In practice, the CMA applies this framework flexibly and may consider these as overlapping analyses, rather than as distinct chronological stages. [CMA 129 Merger Assessment Guidelines](#), paragraph 7.10, footnote 119.

<sup>134</sup> Third-party responses to the CMA's GDN operator questionnaire, question 6a.

network they connect to.<sup>135</sup> Ofgem also confirmed that it is very rare for a customer to have the option to connect to different GDNs.<sup>136</sup>

- (b) The primary factor which drives customer choice between GDNs (location) cannot be flexed by GDN operators. The CMA also found that GDN operators have limited ability to flex their offer to attract new connections including in relation to both price and non-price factors, given that connection charges are calculated in accordance with a pre-determined connection charging methodology, as approved in advance by Ofgem (see paragraph 38).<sup>137</sup>
- (c) None of the GDN operators that responded to the CMA's merger investigation said they had engaged in price or quality competition to attract a customer to their network, rather than connect to another GDN.<sup>138</sup> Consistent with this, no customers indicated that they engaged in any form of negotiation with Cadent and other GDN operators.<sup>139</sup>
- (d) The CMA has not identified any evidence of competition between Cadent and other GDN operators for new connection customers in Cadent's internal documents.
- (e) The absence of competition between GDN operators is consistent with the lack of concerns expressed by all GDN operators and customers that responded to the CMA's merger investigation.

81. For the reasons set out above, the CMA believes that only a very small number of customers have a choice between connecting to Cadent and other GDNs and that GDN operators have limited ability to flex the factors that affect customer choice. The CMA has received no evidence that GDN operators compete with each other to win customers. Accordingly, the CMA considers that any post-Merger foreclosure strategy would not impact competition downstream. The CMA has therefore found that the Merger does not give rise to a realistic prospect of an SLC in the supply of new connections as a result of a result of the foreclosure of other GDNs in Great Britain.

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<sup>135</sup> Third-party responses to the CMA's gas network customer questionnaire, question 9.

<sup>136</sup> Note of Ofgem call with the CMA on 22 September 2022, paragraph 7.

<sup>137</sup> The CMA has not received any evidence to suggest that price, quality, or other aspects of service have been flexed by GDN operators on a connection-by-connection basis, so as to attract customers away from connecting to other networks in practice.

<sup>138</sup> Third-party responses to the CMA's GDN operator questionnaire, question 8.

<sup>139</sup> Third-party responses to the CMA's gas network customer questionnaire, question 11.

## **Vertical effects in the supply of new connections to gas networks as a result of total or partial foreclosure of other IGTs in Cadent's licensed area**

82. IGTs compete to provide new connections in Cadent's licensed geographic area (as an alternative to connections provided by Cadent). National Grid Gas (through its PMC) currently supplies certain asset maintenance services to IGTs.<sup>140</sup> Therefore, the CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in the supply of new connections to gas networks in Cadent's licensed geographic area as a result of the total or partial foreclosure of rival IGTs in Cadent's licensed geographic area through restricting access to National Grid Gas's asset maintenance services (or worsening the terms on which these services are provided).
83. The Parties submitted that while National Grid Gas offers maintenance services to IGTs, there is no credible foreclosure concern given that there is no incentive to foreclose other IGTs as Cadent does not compete with these entities in respect of pipelines which have been constructed.<sup>141</sup> The Parties also submitted that there are a number of alternative suppliers that offer comparable asset maintenance services including MUA, Fast Flow, Network Plus, Morrison Services, Penspen, Costain, Bentley and Billfinger.<sup>142</sup>
84. In its assessment the CMA first considered the ability of the Merged Entity to foreclose IGTs. In this respect, the CMA had regard to the following evidence.
- (a) The CMA received a limited response from IGTs operating in Cadent's licensed geographic area. However, the IGT that did respond said that it does not consider that it competes with Cadent in the supply of new connections and that, for the services that it procures from PMC, there are other providers available.<sup>143</sup>
  - (b) National Grid Gas's internal documents reviewed by the CMA refer to alternative providers of asset maintenance services.<sup>144</sup>
  - (c) Asset maintenance services are not used by IGTs to provide new connections. They are used by IGTs to maintain the networks they own and operate after competition for the connection has taken place. The CMA did not receive any

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<sup>140</sup> National Grid Gas also carries out infrastructure works that may impact on the ability of IGTs to provide certain types of connection. However, any infrastructure works carried out (or not) in Cadent's licensed geographic area would also affect Cadent's ability to carry out new connections. This vertical relationship is therefore not considered in the context of this theory of harm.

<sup>141</sup> FMN, paragraph 19.41.

<sup>142</sup> FMN, paragraph 19.42.

<sup>143</sup> Third-party response to the CMA's IGT questionnaire, Q11 and Q12.

<sup>144</sup> Annex 19.02 to the FMN, [X<].

evidence to suggest that asset maintenance services influence customer decisions regarding new connections.

(d) The CMA did not receive any evidence or concerns to indicate that the Merged Entity would have the ability or incentive to foreclose IGTs in Cadent's licensed geographic area in this way.

85. For the reasons set out above, the CMA believes that the Merged Entity will have no ability to foreclose rival IGT networks in Cadent's licensed geographic area.<sup>145</sup> The CMA has therefore found that the Merger does not give rise to a realistic prospect of an SLC as a result of a result of the foreclosure of IGT networks in Cadent's licensed geographic area.

### **Vertical effects in the supply of new connections works as a result of total or partial foreclosure of rival suppliers of new connection works in Cadent's licensed area**

86. There is a vertical relationship between National Grid Gas and Cadent as a supplier of new connections works in respect of new connections to Cadent's GDNs (Cadent does not supply new connections works outside its licensed area). Through its PMC, National Grid Gas provides certain services such as hot-tapping, flow stopping and welding that are used by GDNs and UIPs carrying new connection works.

87. The CMA assessed whether it is or may the case that the Merger may be expected to result in an SLC in the supply of new connections works in respect of new connections to Cadent's GDNs as a result of the total or partial foreclosure of rival suppliers from access to National Grid Gas's PMC services.

88. The Parties submitted that National Grid Gas competes with a number of independent providers to supply these services.<sup>146</sup>

89. In its assessment the CMA first considered the ability of the Merged Entity to foreclose rival suppliers.

90. UIPs that operate in Cadent's licensed geographic area indicated that most new connection works that they undertake do not require National Grid Gas's PMC services.<sup>147</sup> This is consistent with evidence from Cadent and other GDN operators on how often they use PMC services for new connections works.<sup>148</sup> As such, the

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<sup>145</sup> As the CMA found no ability, did not need to consider incentive and effect.

<sup>146</sup> FMN, paragraph 12.56.

<sup>147</sup> Third-party responses to the CMA's UIP questionnaire.

<sup>148</sup> Third-party response to the CMA's GDN operator questionnaire, question 4. Parties' email response to the CMA dated Thursday 15/09/2022 21:18. Other GDNs typically provide connections works in their own licensed geographic area only and so the CMA's foreclosure analysis focused on potential foreclosure of IGTs and UIPs.

CMA considers that any refusal by National Grid Gas to provide these services to UIPs (or provision of these services on less favourable terms) would be unlikely to impact materially on their competitiveness.

91. In addition, the CMA's analysis of National Grid Gas PMC's internal documents and other third-party evidence also indicates that there are other providers of these services that have a comparable offering to National Grid Gas's PMC.<sup>149</sup>
92. For the reasons set out above, the CMA believes that the Merged Entity will have no ability to foreclose rival UIPs in Cadent's licensed geographic area. The CMA has therefore found that the Merger does not give rise to a realistic prospect of an SLC as a result of the foreclosure of rival UIPs in Cadent's licensed geographic area.

### **Vertical effects in the wholesale and retail supply of gas in Great Britain**

93. Macquarie, through Corona Energy and Macquarie Bank,<sup>150</sup> is active in the wholesale (including trading) and retail supply of gas in the UK.<sup>151</sup> As set out above (from paragraph 33), National Grid Gas plays an important role in the supply of gas, including in its interactions with shippers in managing access to NTS, balancing the NTS and its NEC role.
94. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in the wholesale and retail supply of gas in Great Britain as a result of partial foreclosure of rivals to Macquarie's gas shippers through National Grid Gas:
  - (a) restricting or worsening the terms of access to the NTS;
  - (b) discriminating in favour of Macquarie when trading with shippers; and
  - (c) discriminating in favour of Macquarie in the event of a network gas supply emergency (an NGSE).

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<sup>149</sup> Annex 19.02 to the FMN, [§<] and Third-party response to the CMA's GDN operator questionnaire, question 4. Third-party response to the CMA's UIP questionnaire.

<sup>150</sup> Corona Energy is a wholly owned subsidiary of Macquarie Bank. Corona Energy (through various group entities) and Macquarie Bank are licensed gas shippers and suppliers in Great Britain. FMN, footnote 86. See [List of all gas licensees including suppliers | Ofgem](#).

<sup>151</sup> As set out when considering competitive dynamics in the supply of gas, the CMA has previously distinguished between: (i) the wholesale supply of gas (encompassing the production and importation of gas for sale into the wholesale trading market and the bilateral and exchange trading of gas between market participants, including gas shippers); and (ii) the retail supply of gas to end-customers (encompassing both shippers and suppliers), recognising that while separate licences are required to engage in the 'shipping' of gas (meaning buying gas from wholesale suppliers and paying for its transportation) and the 'supply' of gas (meaning selling to end-users), both 'shipping' and 'supply' functions are often carried out within the same company.

***Input foreclosure of rival gas shippers through restricting or worsening the terms of access to the NTS***

95. As set out in paragraph 41, National Grid Gas has a monopoly function in granting access to the NTS by way of allocating entry and exit capacity rights to shippers. These rights allow shippers to flow gas on to and off the NTS. In order to manage capacity constraints on the NTS, National Grid Gas may also take a range of actions, such as asking shippers to surrender their capacity.<sup>152</sup> The CMA has assessed whether the Merger could result in the foreclosure of rival gas shippers through National Grid Gas restricting or worsening the terms of access to the NTS.
96. The Parties submitted that the Merged Entity would not have the ability or incentive to discriminate in favour of Macquarie given the following.<sup>153</sup>
- (a) There are comprehensive regulatory protections that prevent any hypothetical discrimination in favour of Macquarie gas shippers or suppliers. In particular, National Grid Gas must always act in a manner consistent with its statutory obligations under the Gas Act<sup>154</sup> and its licence conditions<sup>155</sup> (which prevent discriminatory conduct in relation to gas shippers) and is obliged to contract with gas shippers on the terms set out in the UNC.<sup>156</sup>
  - (b) There are practical factors which limit National Grid Gas's ability to discriminate in favour of particular counterparties in capacity auctions. Capacity auctions are conducted on the Gemini system, owned by National Grid Gas but administered by Xoserve.<sup>157</sup>
  - (c) The structure of the Merged Entity militates against potential discrimination in practice, given:
    - (i) Macquarie's respective interests in National Grid Gas and the Macquarie gas shipper/supplier business will be held in different divisions of Macquarie, separated by strict information barriers for legal and

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<sup>152</sup>Actions to manage constraints can be taken in certain, specified circumstances (see [Constraint management | National Grid Gas](#)). These include locational trades.

<sup>153</sup> FMN, paragraphs 19.64 to 19.67, Executive Summary III(a)(vii), and Parties' response to the CMA questions (gas shippers) of 24 October 2022, paragraphs 2, 4, 6 and 7.

<sup>154</sup> Specifically, its obligations to develop and maintain an efficient and economic pipeline system for conveying gas and avoid undue preference or undue discrimination in conveying gas through the system (which includes actions relating to constraint management). Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraph 2.

<sup>155</sup> Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraph 2. See footnote 54 for a summary of the conditions SSC A3 and A33. Condition SSC A11 secures effective competition between shippers by ensuring the licensee establish transportation arrangements in accordance with the Gas Act, where the arrangements are in respect of matters other than to which the UNC applies.

<sup>156</sup> In particular, capacity auctions are governed by Section B2 (entry capacity) and B3 (exit capacity) of the UNC. Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraph 2.

<sup>157</sup> Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraph 4.



regulatory compliance reasons and subject to separate fiduciary obligations;<sup>158</sup>

- (ii) the Macquarie-BCI consortium structure (and National Grid's retained stake) mean that Macquarie will not have the ability to operate National Grid Gas in a way which would allow Macquarie to discriminate in favour of its existing utilities businesses;<sup>159</sup> and
- (iii) National Grid Gas is subject to a licence condition that requires it to have two sufficiently independent directors appointed to the board as an additional protection against undue shareholder influence.<sup>160</sup>

97. In assessing whether the Merger could result in the foreclosure of rival gas shippers, the CMA considered whether the Merged Entity, through National Grid Gas, has the ability to foreclose shippers. As capacity rights are an important input for shippers and National Grid is the only supplier,<sup>161</sup> in its assessment, the CMA therefore focussed on whether the technical and regulatory framework in which access to the NTS is managed precludes National Grid Gas from restricting or worsening the terms of access.

98. The evidence received by the CMA, set out below, indicates that there is limited scope for the Merged Entity, through National Grid Gas, to be able to discriminate in favour of Macquarie's gas shippers in practice.

- (a) As set out in paragraph 43, under the terms of its licence, National Grid Gas is obligated to release a baseline level of capacity and to allocate capacity according to capacity release methodology statements, which must be approved by Ofgem following consultation with shippers and other industry participants.<sup>162</sup> Allocation of capacity (including the price at which capacity rights are made available) must also be in accordance with the terms of the UNC.<sup>163</sup> Compliance with these obligations is enforced by Ofgem, pursuant to

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<sup>158</sup> Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraph 6. FMN, Executive Summary, III(a)(vii).

<sup>159</sup> In particular, BCI, National Grid and National Grid Gas would have no economic interest to permit discrimination in favour of Macquarie entities, noting the significant risk of enforcement and reputational damage that this may entail. Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraph 7.

<sup>160</sup> Licence condition SSC A42. Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraph 7.

<sup>161</sup> In assessing whether a merged entity would have the ability to foreclose rivals, the CMA considers whether the merged entity could refuse to supply (or supply on worse terms) its inputs to rivals and whether it would be able to harm rivals' competitiveness by doing so. To this end, the CMA will typically focus on the merged entity's position upstream (ie whether rivals can easily switch away from the merged entity for this input) and importance of the input to downstream competition. [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraphs 7.12-7.15.

<sup>162</sup> [Special Condition 9.18](#) of National Grid Gas's transporter licence requires it to use all reasonable endeavours to release a baseline level of entry and exit capacity ('**obligated**' capacity). See [Entry Capacity Release Methodology Statement](#) (9 May 2022) and [Exit Capacity Release Methodology Statement](#) (10 June 2022).

<sup>163</sup> Accordingly, these terms are reflected in National Grid Gas's capacity release methodology and charging statements (see [Gas Transmission Transportation Charges](#) (1 October 2022)). Ofgem confirmed that National Grid Gas is required

reporting and approval requirements, including with respect to modifications to National Grid Gas's entry and exit capacity release methodologies and financial incentives and reporting requirements under its price control (see paragraph 43).

- (b) The majority of third-party shipper respondents identified legal and regulatory constraints as limiting or preventing National Grid Gas from being able to discriminate in favour of Macquarie including in particular National Grid Gas's licence conditions and the UNC.<sup>164</sup>
- (c) Access to the NTS is generally managed by way of capacity auctions.<sup>165</sup> The operational framework of these auctions, as highlighted by third parties in response to the CMA's merger investigation, indicates that there is little, if any, means for National Grid Gas to discriminate in favour of Macquarie in practice, given the following.
  - (i) Auctions take place on dedicated platforms operated by industry bodies on National Grid Gas and other transporters' behalf.<sup>166</sup> These auctions are operated in accordance with the UNC and National Grid Gas's published capacity release<sup>167</sup> and charging<sup>168</sup> methodologies, which set out, among other things, the minimum bid ('**reserve**') price<sup>169</sup> and, where demand outstrips the capacity being auctioned, the order in which bids will be accepted.<sup>170</sup>
  - (ii) The majority of third-party shippers that responded to the CMA's merger investigation considered that, from a technical perspective, National Grid Gas would have no ability to discriminate in favour of Macquarie's shippers in the context of capacity auctions, while others considered that any ability would be limited or 'theoretical'.<sup>171</sup> Several shippers noted that

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to follow the UNC under the terms of its licence and noted that SSSA6 of National Grid Gas's licence imposes specific obligations on National Grid Gas to avoid conferring an unfair advantage on a network user (including a preferential or discriminatory advantage on National Grid Gas or any of its affiliates or related undertakings, any gas shipper or supplier or GDN operator) when conducting its transportation business. Ofgem's submission to the CMA dated 12 October 2022, paragraphs 51 and 52.

<sup>164</sup> Third-party responses to the CMA's Gas Shipper Questionnaire, question 12.

<sup>165</sup> For entry rights, these include short-term (daily and weekly) auctions and long-term (monthly, quarterly and annual) auctions (see [Entry capacity | National Grid Gas](#)). For exit rights, these include short-term (daily) auctions and long-term auctions and application windows (see [Exit capacity | National Grid Gas](#)).

<sup>166</sup> Capacity entry and exit rights for most of the NTS are allocated through the Gemini system, operated by Xoserve, an industry body jointly owned by National Grid Gas and the four GDN operators in Great Britain, on behalf of National Grid Gas. Capacity auctions for capacity rights at interconnection points (between different countries) take place on the PRISMA platform operated by PRISMA, an industry body set up by a group of European transmission system operators.

<sup>167</sup> See [Entry Capacity Release Methodology Statement](#) (9 May 2022) and [Exit Capacity Release Methodology Statement](#) (10 June 2022).

<sup>168</sup> See [Gas Transmission Transportation Charges](#) (1 October 2022).

<sup>169</sup> I.e., the price at which capacity rights will be sold where available capacity exceeds demand.

<sup>170</sup> See, eg, [Entry Capacity Release Methodology Statement](#) (9 May 2022), paragraph 49.

<sup>171</sup> Third-party responses to the CMA's Gas Shipper Questionnaire, question 12.

auctions are transparent (ie the bid prices are made available to all auction participants) and that bids are accepted in price order, in accordance with predetermined processes.

- (iii) One shipper noted that in ordinary market conditions there is typically more capacity available than required, and that most bids will therefore be placed at the pre-determined published reserve price.<sup>172</sup> Similarly, Ofgem submitted that, in general, on most of the NTS capacity exceeds demand, such that capacity rights are readily available at the reserve price.<sup>173</sup>
- (d) National Grid Gas sometimes allocates capacity outside of the ordinary-course auctions described above<sup>174</sup> and takes action to address constraints in the system. A small number third-party shippers indicated that National Grid Gas may be able to discriminate in favour of Macquarie's shippers when taking such actions. However, the majority of third-party shipper respondents identified legal and regulatory constraints as limiting or preventing National Grid Gas's ability to discriminate in favour of Macquarie (see paragraph 98(b)). Moreover, in recent years there has generally been excess capacity on the NTS. Ofgem noted that commercial actions to address constraints are rare in practice (approximately 2-4 a year) and pertain to local areas.<sup>175</sup> Consistent with this, third-party shippers generally did not express any concern regarding the risk of foreclosure. While one third-party shipper noted that the impact of any discrimination could be material,<sup>176</sup> no third-party expressed a concern that National Grid Gas would have the ability to foreclose Macquarie's shippers.<sup>177</sup>

99. The CMA also considered whether the ownership and governance structure for Macquarie and National Grid Gas limits the Merged Entity's ability to pursue a foreclosure strategy.

- (a) The Macquarie-BCI consortium structure (and National Grid's retained stake) limits the extent of Macquarie's influence over National Grid Gas's strategy in practice. Both BCI and National Grid will hold material influence over National

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<sup>172</sup> Third-party response to the CMA's Gas Shipper Questionnaire, question 12.

<sup>173</sup> Ofgem's submission to the CMA dated 12 October 2022, page 33. Note of call with Ofgem on 20 October 2022, paragraph 1.

<sup>174</sup> For example, National Grid Gas may hold a discretionary release auction in response to demand. See [Entry capacity | National Grid Gas](#).

<sup>175</sup> Note of call with Ofgem on 20 October 2022, paragraph 1. The last physical capacity buy back happened in June 2006. There have been approximately two locational sell actions in the regulatory year 2021/2022.

<sup>176</sup> Third-party response to the CMA's Gas Shipper Questionnaire, question 14. Another third-party shipper noted that discrimination in this way could have an impact on shippers' costs and operations but did not comment on the extent of such impact on shippers' ability to compete. Third-party response to the CMA's Gas Shipper Questionnaire, question 13.

<sup>177</sup> Third-party responses to the CMA's Gas Shipper Questionnaire.

Grid Gas post-Merger. Accordingly, Macquarie's ability (via MIRAEL) to influence the commercial policy of National Grid Gas post-Merger, for example by potentially favouring Macquarie's gas shippers and suppliers, will be limited by the post-Merger rights of both BCI and National Grid. In this regard, the CMA notes that National Grid Gas's other shareholders have no economic interest in Macquarie's gas shippers and suppliers and, therefore, no incentive to allow Macquarie to favour these businesses, especially if this risks financial penalties or other enforcement action. The CMA considers that this will place some limits on Macquarie's ability to use its shareholding and other rights to favour its gas shippers and suppliers.

- (b) Several third-party shippers noted that it is important that appropriate ring-fencing measures are in place as between the National Grid Gas and Macquarie's business to avoid a potential conflict of interest.<sup>178</sup> In this regard, the CMA notes that under the terms of its licence, National Grid Gas is required to manage and operate its business in a way calculated to ensure that it does not restrict, prevent or distort competition in the supply or shipping of gas, and to conduct its business in the manner best calculated to secure that a gas shipper does not obtain any unfair commercial advantage.<sup>179</sup>

100. The CMA further considered the likely impact of any potential discrimination on competition in the wholesale and retail supply of gas. The evidence received by the CMA indicates that Macquarie's shippers compete with a wide range of competitors in the wholesale and retail supply of gas and their position is likely to be limited overall, which would limit the impact of any discrimination. There are more than 280 licensed gas shippers in Great Britain<sup>180</sup> and third-party shippers indicated that they compete with a wide range of market participants in the wholesale supply of gas, including producers, retail suppliers and financial trading houses.<sup>181</sup> At the retail level, Ofgem estimates that Corona Energy accounts for less than 5% of end-customer demand overall<sup>182</sup> and the presence of a number of other I&C suppliers, including the six large energy firms, indicates that Corona Energy's position in any segment is likely to be limited.<sup>183</sup>

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<sup>178</sup> Third-party responses to the CMA's gas shipper questionnaire.

<sup>179</sup> SSC A33 and SSC A6 of National Grid Gas's transporter licence (with SSC A6 intended to prevent behaviour such as information sharing). Ofgem submission of 12 October 2022 and response to the CMA's questions of 19 October 2022.

<sup>180</sup> Ofgem submission to the CMA dated 12 October, paragraph 42. See also [List of all gas licensees including suppliers | Ofgem](#).

<sup>181</sup> Third-party responses to the CMA's gas shipper questionnaire, question 4.

<sup>182</sup> Ofgem submission to the CMA dated 12 October 2022, page 31.

<sup>183</sup> See, eg, CMA's [Energy Market Investigation Final Report](#), 24 June 2016, paragraph 2.28 and M.8358 – *Macquarie / National Grid / Gas Distribution Business of National Grid* (16 March 2017), paragraph 31.

## *Conclusion*

101. Taking into account the evidence set out above, the CMA has therefore found the Merger does not give rise to a realistic prospect of an SLC in the wholesale and retail supply of gas in Great Britain as a result of partial foreclosure of rival gas shippers through the Merged Entity restricting or worsening the terms of access to the NTS.

### ***Input foreclosure of rival gas shippers by discriminating in favour of Macquarie when trading with shippers***

102. As set out in paragraphs 48 to 51, National Grid Gas trades with shippers for the purposes of balancing the NTS, managing constraints on the NTS and buying shrinkage (that is, energy used to operate the NTS and other energy that cannot be charged to consumers or accounted for in the measurement and allocation process). The CMA has assessed whether the Merger could result in the foreclosure of rival gas shippers post-Merger by National Grid Gas favouring Macquarie when trading with gas shippers.

103. The Parties submitted that the Merged Entity would not have the ability or incentive to discriminate in favour of Macquarie's gas shippers or suppliers when trading for these purposes. In particular, the Parties submitted that the vast majority of trading is conducted on markets that are anonymous at the point of execution<sup>184</sup> and that any discrimination would be a breach of National Grid Gas's licence conditions.<sup>185</sup>

104. In assessing whether the Merger could result in the foreclosure of rival gas shippers, the CMA considered whether the Merged Entity, through National Grid Gas, would have the ability to foreclose shippers. In particular, the CMA considered whether the technical and regulatory framework in National Grid Gas trades with shippers precludes National Grid Gas from discriminating in favour of Macquarie.

105. The evidence received by the CMA, set out below, indicates that there is little, if any, scope for National Grid to discriminate in favour of Macquarie's shippers when trading.

- (a) As set out above, National Grid Gas only trades gas in order to maintain the integrity of the NTS – specifically, within the context of its role in balancing the

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<sup>184</sup> With regard to trading for the purposes of balancing and managing constraints on the NTS, the Parties submitted that nearly of this is conducted on the OCM 'title' market, which is anonymous at the point of execution (FMN, paragraph 19.72). With regard to trading for shrinkage purposes, all markets that National Grid Gas currently trade in are anonymised at the point of trade execution (FMN, paragraph 19.77).

<sup>185</sup> In particular, as set out in footnote 185, SSC A6 provides that National Grid Gas 'shall conduct its transportation business in the manner best calculated to secure that neither... any gas shipper or gas supplier... obtains any unfair commercial advantage being, in the case of such an advantage accruing to the licensee, one in connection with a business other than its transportation business'. FMN, paragraph 19.73.

NTS, managing constraints and procuring shrinkage.<sup>186</sup> Under the terms of its licence, National Grid Gas is obligated to operate in these roles in accordance with the UNC<sup>187</sup> and its published system management principles statement, which must be approved by Ofgem following consultation with shippers and other industry participants.<sup>188</sup> National Grid Gas is also subject to financial incentives and reporting requirements for meeting agreed targets with respect to its balancing of and managing capacity constraints on the NTS, and a reputational incentive with respect managing shrinkage (pursuant to which National Grid Gas is required to purchase gas for shrinkage in accordance with its Gas Volume Methodology, see paragraph 51).

- (b) Nearly all third-party shippers that responded to the CMA's merger investigation stated that they did not trade with National Grid Gas outside of the OCM markets.<sup>189</sup> With regard to the OCM markets, the third-party shippers indicated that the vast majority of trading is on the title market, which is anonymous at the point of execution.<sup>190</sup> For most trades National Gas Grid therefore does not know the identity of who it is trading with at the point of execution, precluding any discrimination in favour of Macquarie.
- (c) Almost all third-party shippers that responded to the CMA's merger investigation also considered that, from a technical perspective, National Grid Gas would be unlikely to have the ability to discriminate in favour of Macquarie's shippers when trading on the OCM markets, with most indicating that they considered that National Grid Gas would have no such ability.<sup>191</sup>
- (d) Further, the extent of trading by National Grid Gas with shippers is likely to be limited given the majority of shippers' trading with National Grid Gas is in the context of its balancing function, which is residual in nature (National Grid Gas only steps into trade with shippers when shippers – who are financially

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<sup>186</sup> See paragraphs 45 to 47.

<sup>187</sup> Trading for the purposes of balancing the NTS is governed by the terms of section D of the UNC while actions for managing constraints (including locational trades) and shrinkage-related activity are also subject to the terms of Section B and N of the UNC, respectively.

<sup>188</sup> See [System Management Principles Statement](#), 5 September 2022. Trading for the purpose of managing constraints must also be in accordance with National Grid Gas's capacity release statements.

<sup>189</sup> One submitted that they execute OTC trades with National Grid Gas but that they are anonymous at the point of execution.

<sup>190</sup> Third-party responses to the CMA's gas shipper questionnaire, question 6. Respondents who used the locational market or physical market indicated that they did so rarely or very rarely.

<sup>191</sup> Third-party responses to the CMA's Gas Shipper Questionnaire, question 7. One respondent submitted that National Grid Gas would, as a technical matter, have the ability to discriminate when contracting locational trades and submitted that National Grid Gas is able to operate the network and trade with specific entities at its discretion and publishes limited data with respect to when and how network constraints have been managed. However, this third-party further explained that locational trades are not done often and only where there is a particular need (Note of call with a third-party on 19 October 2022). Another third-party submitted that it is very unlikely that the Merged Entity will be able to discriminate against gas shippers by trading with some and not others due to the audit trail of how trades are posted and the exposure to regulatory oversight (Note of call with a third-party on 21 September 2022).

incentivised to balance their own position in the course of the day<sup>192</sup> – fail to balance their own position and thus the NTS). According to estimates provided by National Grid Gas, the overall value of National Grid Gas’s trades made for the purpose of shrinkage and balancing in financial years 2021 and 2022 accounted for less than [0-5]% of overall demand in Great Britain.<sup>193</sup>

- (e) Consistent with this, no third-party expressed a concern that National Grid Gas would have the ability to foreclose Macquarie’s shippers through discriminating in favour of Macquarie when trading.<sup>194</sup>

106. For the reasons set out in paragraph 99, the CMA also considers that the ownership and governance structure for Macquarie and National Grid Gas and Macquarie’s position in the wholesale and retail supply of gas further limit the Merged Entity’s ability to pursue a foreclosure strategy and the impact any such strategy would have on competition in practice.

### *Conclusion*

107. Taking into account the evidence set out above, the CMA has therefore found the Merger does not give rise to a realistic prospect of an SLC in the wholesale and retail supply of gas in Great Britain as a result of partial foreclosure of rival gas shippers through the Merged Entity discriminating in favour of Macquarie when trading with shippers.

### ***Input foreclosure of rival gas shippers through discriminating in favour of Macquarie in the event of a network gas supply emergency***

108. As noted in paragraph 52, if National Grid Gas were unable to maintain a supply – demand balance on the NTS using its normal system balancing tools, National Grid Gas would request the NEC, an appropriately qualified individual appointed by National Grid Gas, to declare an NGSE. The declaration of an NGSE provides National Grid Gas with access to additional balancing tools including load shedding (a process requiring gas consumers, starting with the largest industrial consumers, to stop using gas).

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<sup>192</sup> Consistent with this, almost all shippers indicated that they trade on the OCM daily.

<sup>193</sup> Based on National Grid Gas’s best estimates in the time available, using Market Information Provision Initiative data (for demand), ICE data (for System Average Price (SAP)) and Regulatory Reporting Pack (RRP) data (for shrinkage and residual balancing trades). National Grid Gas’s response to the CMA’s questions of 19 October 2022.

<sup>194</sup> Whether for the purposes of balancing, constraint management or shrinkage. While one third-party noted that National Grid Gas would, as a technical matter, have the ability to discriminate with respect to locational trades (because these are not anonymous), they further noted that such trades are not done often and only where there is a particular need. Some third parties noted a need for appropriate ring-fencing measures to avoid a potential conflict of interest (see paragraph 99(b)).

109. The CMA has assessed whether the Merger could result in the foreclosure of rival gas shippers through National Grid Gas discriminating in favour of Macquarie through use of its additional balancing tools in the event of an NGSE.
110. The Parties submitted that National Grid Gas would not have the ability or incentive to discriminate in favour of Macquarie's gas shippers in the event of an NGSE, given that:
- (a) actions taken in relation to an NGSE are undertaken by the NEC, acting independently of National Grid Gas's commercial interests and those of its associated or affiliated companies;
  - (b) any actions are subject to oversight of the HSE through audit and reporting requirements and close scrutiny by BEIS through its Emergency Response Team function;<sup>195</sup>
  - (c) any actions taken by National Grid Gas are subject to its statutory obligations and licence conditions, which expressly preclude discrimination in favour of particular shippers (including Macquarie's shippers); and
  - (d) the ownership and governance structure for National Grid Gas and Macquarie's shippers (see paragraph 99) further limits the ability and incentive for National Grid Gas to favour Macquarie's shippers in practice.<sup>196</sup>
111. In assessing whether the Merger could result in the foreclosure of rival gas shippers, the CMA considered whether the technical and regulatory framework in which National Grid Gas would operate in an NGSE precludes National Grid Gas from discriminating in favour of Macquarie.
112. Based on the following evidence, the CMA considers that the scope for National Grid Gas to discriminate in favour of Macquarie is limited.
113. The majority of third-party shippers that responded to the CMA's merger investigation did not consider that National Grid Gas would have the ability to discriminate in favour of Macquarie in the context of emergency capacity management actions.<sup>197</sup>
114. While one third-party shipper raised a concern that, in a pre-emergency situation where there is a gas deficit, National Grid Gas would be able to discriminate in

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<sup>195</sup> Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraph 8.

<sup>196</sup> Parties' response to CMA questions (gas shipping) of 24 October 2022, paragraph 19.

<sup>197</sup> Third-party responses to the CMA's Gas Shipper Questionnaire, question 14. One noted that, in the event of an NSGE, directions would come from the NEC in accordance with the procedure for NGSE and NEC's safety case, and that transporters have a duty to cooperate with the NEC and there are criminal sanctions for non-compliance.



favour of Macquarie’s shippers,<sup>198</sup> the evidence received by the CMA indicates that under the existing NGSE framework, a number of steps mitigate against this risk in practice.

- (a) As set out in paragraph 53, any actions by National Grid Gas in the context of an NGSE would be carried out in accordance with its published pre-established procedure for an NGSE (the **NGSE Procedure**),<sup>199</sup> which is prepared in accordance with the NEC’s safety case, pursuant to statutory obligations under the GSMR.
- (b) National Grid Gas’s powers to implement load shedding only arise if an NGSE has been declared.
- (c) While National Grid Gas has a central role in determining the course of action in response to an NGSE, the NGSE Procedure determines the framework that National Grid Gas must follow, and requires National Grid Gas to prepare an emergency strategy (which must be in accordance with the overarching NGSE Procedure)<sup>200</sup> setting out the action necessary to respond to the NGSE which must be approved by the NEC.
- (d) National Grid Gas’s actions would be subject to wider governmental oversight.<sup>201</sup>

115. Further, the CMA considers that while the impact of shutting off the gas supply to a shipper (or its end customer) in respect of a given location may be significant<sup>202</sup> in the event of an NGSE, the scope for this to impact the shipper’s ongoing ability to compete is likely to be limited, given that load-shedding is a temporary measure that could only happen in the context of the exceptional circumstances of an NGSE<sup>203</sup> and as an NGSE is subject to regulatory and governmental oversight (as set out above) any sustained load shedding exercise would be subject to close scrutiny.

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<sup>198</sup> Specifically, the third-party submitted that, in a pre-emergency scenario, National Grid Gas would be able to balance the system by withdrawing capacity from users (eg, a power station) and that, as the choice of such user would be within National Grid Gas’s discretion, and not transparent or verifiable, there is scope for discrimination. The third-party noted in this respect that the impact on the user could be significant. Third-party response to CMA questions of 18 October 2022.

<sup>199</sup> [TRANSCO/E/1 \(nationalgrid.com\)](https://www.nationalgrid.com/uk/eng/transco/e/1)

<sup>200</sup> The NGSE Procedure provides guidance as to the types of information that will be used by National Grid Gas in preparing the emergency strategy.

<sup>201</sup> The NGSE Procedure provides that a Network Emergency Management Team (**NEMT**) will be set up, led by an Incident Controller, who will manage the incident, develop the emergency strategy and liaise with the NEC. BEIS would form their emergency response team (**ERT**) in accordance with the BEIS National Emergency Plan for Gas and Electricity. The BEIS ERT would receive information from wider government, National Grid Gas, the NEMT, GDN operators and other relevant gas (and electricity, as applicable) industry representatives on the wider impacts of the NGSE.

<sup>202</sup> As noted above, one third-party raised a concern that the impact of shutting of a shipper’s or their end-customer’s gas supply to a particular location in the context of load shedding would be significant. Third-party response to CMA questions of 18 October 2022.

<sup>203</sup> To date, there have been no NGSEs. [Network Gas Supply Emergencies \(NGSE\) | National Grid Gas](https://www.nationalgrid.com/uk/eng/transco/e/1).

## *Conclusion*

116. The CMA has therefore found that the Merger does not give rise to a realistic prospect of an SLC in the wholesale and retail supply of gas in Great Britain as a result of partial foreclosure of rival gas shippers through the Merged Entity discriminating in favour of Macquarie in the event of an NGSE.

## **Horizontal unilateral effects in the supply of MAP services in Great Britain**

117. The Parties are both active in the supply of MAP services in Great Britain and overlap in the supply of MAP services for traditional gas meters for domestic customers.

118. As noted above in paragraph 58(a), MAP service providers purchase meters from meter manufacturers and rent them to retail energy suppliers, typically over a 10 to 15 year period.<sup>ii</sup> The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of MAP services in Great Britain.

119. For the purposes of its assessment, the CMA considered:<sup>204</sup> (i) the closeness of competition between the Parties; and (ii) the competitive constraint from alternative suppliers.

## ***Closeness of competition***

120. The Parties submitted that there is no meaningful competition between National Grid Gas and Macquarie.<sup>205</sup> In particular, they submitted the following.

- (a) All of the traditional meters provided by National Grid Gas to domestic customers are provided pursuant to its licence obligation as a backstop meter provider of last resort.<sup>206</sup> National Grid Gas's licence regulates the price and terms on which it must supply customers pursuant to this backstop obligation. In particular, the licence imposes tariff caps for the provision, maintenance and installation of traditional gas meters.<sup>207</sup> National Grid Gas submitted that the result of this regulation is that it is not able to compete on price with other MAP providers.<sup>208</sup> It submitted that, in line with the operation of a business designed

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<sup>204</sup> Share of supply data, which are reflective of current competitive conditions, in relation to the provision of MAP services for newly installed traditional domestic gas meters, was not available. As such, the CMA's assessment has focused on closeness of competition and competitive constraints.

<sup>205</sup> Parties' response to CMA questions (metering) of 24 October 2022, paragraph 2.2.

<sup>206</sup> FMN, paragraph 15.3, Annex 08.05 [S<], page 14, Parties' response to CMA questions (metering) of 24 October 2022, paragraph 3.1. Ofgem confirmed that NGM holds the position of the National Meter Manager, providing a Backstop Meter Provider of Last Resort service with respect to its MAP services for domestic gas meters pursuant to a condition of its gas transporter licence (Ofgem submission to the CMA dated 12 October 2022, paragraph 23).

<sup>207</sup> Special Condition 9.16.

<sup>208</sup> FMN, paragraph 15.8

to be turned to as a last resort, all traditional domestic meters are provided on a reactive basis.<sup>209</sup>

- (b) Macquarie supplies MAP services for smart and traditional electricity and gas meters whereas National Grid Gas provides MAP services only for traditional gas meters.<sup>210</sup> The Parties submitted that Macquarie's competitive focus is to compete in tenders for contracts to supply MAP services for large volumes smart meters, with traditional meters typically provided to customers as an ancillary service. National Grid Gas does not compete for these tenders because it does not have a smart meter offering.
- (c) National Grid Gas has a combined MAP/MAM offering for traditional domestic gas meters which cannot be unbundled, whereas Macquarie offers an only MAP service for traditional domestic gas meters. The Parties submitted that a customer looking for MAP-only services would be unlikely to want to pay for the integrated services offered by National Grid Gas.<sup>211</sup>

121. Consistent with the Parties' submissions, the CMA found that while both parties are active in the supply of MAP services in Great Britain,<sup>212</sup> there are significant differences in their offering which means that they do not compete closely.

- (a) A number of customers told the CMA that they look to procure MAP services for smart and traditional meters together (given limited demand for traditional meters) and do not therefore consider National Grid Gas to be an alternative to suppliers such as Macquarie that offer both.
- (b) The CMA's assessment of Macquarie's internal documents found that Macquarie's focus is on competing [redacted] with [redacted] and [redacted] for smart domestic meter MAP contracts.<sup>213</sup> National Grid Gas is rarely mentioned in Macquarie's internal documents.
- (c) National Grid Gas's internal documents rarely refer to other providers of MAP services as competitors in the supply of traditional domestic meters.

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<sup>209</sup> Parties' response to CMA questions (metering) of 24 October 2022, paragraph 3.1., paragraph 3.3

<sup>210</sup> FMN, paragraphs 15.14 and 15.15. Based on the 2021 calendar year, approximately [redacted]% of Macquarie's new installations/services are for gas meters and [redacted]% for electricity meters (whether smart or traditional). Macquarie also supplies MAP services for (electricity) meters for I&C premises whereas National Grid Gas supplies MAP services for (gas) meters for domestic and I&C premises. However the vast majority of Macquarie's meters (both in terms of installed based and new installations) are in domestic premises.

<sup>211</sup> Parties' response to CMA questions (metering) of 24 October 2022, paragraph 2.3.

<sup>212</sup> The CMA also considered the extent to which the Parties overlap in other metering services. The Parties do not overlap in the supply of MDC services. Whilst the Parties identified National Grid Gas being active in providing MAM services as part of a bundled offering with its MAP services, Macquarie has not provided MAM/MOP services for new meter installations across its portfolio in the last 3 calendar years. Therefore, the Parties do not overlap with respect to MAM/MOP services. Such overlaps are not considered further in this decision.

<sup>213</sup> Annex 10.10 [redacted] and Annex 10.09 [redacted].

### ***Competitive constraint from alternative providers***

122. The Parties submitted that the Merged Entity will face competition from a number of commercial MAP providers such as Calisen, SMS, Equitic/MapleCo, Northern Power Grid, Horizon, and Smart Meter Assets.<sup>214</sup>
123. The evidence available to the CMA suggests that where new MAP services for traditional domestic gas meters are required, energy suppliers typically seek to ensure that contracts with smart gas meter MAP providers include funding for any traditional gas meters that might be required, rather than entering into separate contracts for traditional domestic meters.<sup>215</sup>
124. Evidence received by the CMA from customers and suppliers indicates that there are a number of alternative providers of MAP services for both smart and traditional gas meters to the Merged Entity.
- (a) Both Calisen and SMS were frequently identified by customers as alternative suppliers to the Parties in the provision of MAP services for traditional gas domestic meters.<sup>216</sup>
  - (b) Other providers of MAP services that were identified less frequently by customers include SGN and Smart Meter Assets.<sup>217 218</sup>
  - (c) [X] are considered by Macquarie as competitors in its internal documents.
  - (d) As these other suppliers supply both traditional and smart meters, the CMA considers that they are likely to compete more closely with Macquarie than National Grid Gas.

### ***Conclusion on horizontal unilateral effects in the supply of MAP services in Great Britain***

125. For the reasons set out above, the CMA believes that the Parties do not currently compete with each other in the provision of MAP services to any material degree and, specifically in relation to the provision of MAP services for traditional gas meters for domestic premises that there are remaining alternative suppliers to constrain the Merged Entity post-Merger. The CMA has therefore found that the

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<sup>214</sup> FMN, paragraph III, a), iii).

<sup>215</sup> Third-party response CMA metering customer questionnaire, question 8. Third-party response to CMA metering competitor questions via email, Friday 21/10/2022 11:56, question 2.

<sup>216</sup> Third-party responses to CMA's metering customer questionnaire, question 7a. Third-party response to CMA's metering customer questionnaire, question 8.

<sup>217</sup> Third-party response to CMA's metering customer questionnaire, question 7a.

<sup>218</sup> Annex 08.05 NGM Operating Playbook FY21 22 04 2020.PDF.

Merger does not give rise to a realistic prospect of an SLC as a result of a result of horizontal unilateral effects in the supply of MAP services in Great Britain.

## **BARRIERS TO ENTRY AND EXPANSION**

126. 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.<sup>219</sup>
127. 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**

128. Given its role as the sectoral regulator, the CMA gathered information and evidence from Ofgem.
129. The CMA also contacted customers and other third parties active in the gas supply chain. As set out above, whilst a few third parties raised potential concerns about the Merger, the majority either had no view or no concerns about the Merger's impact on competition in the UK.
130. Third party comments have been taken into account where appropriate in the competitive assessment above.

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<sup>219</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 8.40.

## DECISION

131. 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.
132. The Merger will therefore not be referred under section 33(1) of the Act.

**Naomi Burgoyne**  
**Director**  
**Competition and Markets Authority**  
**22 November 2022**

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<sup>i</sup> Macquarie noted that, prior to closing: (i) on the Macquarie side, Bidco will be ultimately controlled by two funds, which are portfolio-managed (and therefore controlled for these purposes) by MIRAEL; and (ii) on the BCI side, Bidco will be indirectly controlled by an affiliate of BCI (which is ultimately controlled by BCI).

<sup>ii</sup> Macquarie noted that its MAP rental contracts for traditional gas meters are typically shorter than 10 years, having regard to the SMIP (see paragraph 61).