

Anticipated Acquisition by Macquarie Asset Management of a jointly controlling interest in Last Mile Infrastructure (Holdings) Limited

Decision on duty to refer

ME 7095/24

The Competition and Markets Authority’s decision on relevant merger situation and whether the creation of that situation may be expected to cause substantial prejudice to the ability of Ofgem to make comparisons between energy network enterprises under section 68C of the Enterprise Act 2002 given on 16 September 2024. Full text of the decision published on 10 October 2024.

The Competition and Markets Authority (**CMA**) has excluded from this version of the Decision information which the CMA considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [§]. Some numbers have been replaced by a range, which are shown in square brackets.

Contents

SUMMARY	3
ASSESSMENT	4
1. PARTIES AND MERGER	4
2. PROCEDURE	5
3. JURISDICTION	6
4. COUNTERFACTUAL	7
5. BACKGROUND	7
6. ASSESSMENT	8
6.1 Statutory framework	8
6.2 CMA approach	9
6.3 Ofgem’s criteria for the assessment of the impact of a merger	10

6.4 CMA assessment and conclusion 13
6.5 Relevant customer benefits..... 14
DECISION 15

SUMMARY

Introduction

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Macquarie Group Limited (**Macquarie**), through its indirectly owned funds, of 50% of the issued share capital of Last Mile Infrastructure (Holdings) Limited (**LMI**) (the **Merger**), is a relevant merger situation that does not cause substantial prejudice to the ability of the Office of Gas and Electricity Markets (**Ofgem**) to make comparisons between energy network enterprises of the type involved in the Merger.
2. Macquarie is active in the UK gas and electricity sector through its stake, via different entities, in Cadent Gas Limited (**Cadent**), National Gas Transmission plc (**NGT**), Matrix Group (**Matrix**) and UK Power Distribution (**UKPD**). LMI and its subsidiaries design, build, own and operate last mile utilities infrastructure, including gas and electricity connections in Great Britain (**GB**).
3. Macquarie and LMI are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
4. The CMA has a duty to investigate energy network mergers further to the special energy network merger provisions of the Enterprise Act 2002 (the **Act**). The CMA has concluded that it has jurisdiction to review this Merger because a relevant merger situation has been created: each of Macquarie and LMI is an energy network enterprise of the same type that will cease to be distinct as a result of the Merger and the turnover test is met.
5. The CMA has also considered the Merger's effect on competition in the installation and adoption of last mile utility connections and has decided not to refer the Merger to a phase 2 investigation in a separate decision on 16 September 2024.

Assessment

6. Ofgem submitted that it does not rely on data provided by the Parties for the purposes of making comparisons. The CMA considers that since the Merger will not lead to a reduction in the number of comparators, ie the Gas Distribution Network operators or Distribution Network Operators currently operating in the market or a loss of an independent comparator, the Merger is not likely to substantially prejudice Ofgem's ability to make comparisons.

Conclusion

7. The Merger will therefore **not be referred** under section 68C of the Act.

ASSESSMENT

1. PARTIES AND MERGER

8. Macquarie is a global provider of banking, financial, advisory, investment and funds management services and is listed on the Australian Securities Exchange.¹ Macquarie is active in the UK gas and electricity sector through the following divisions:
- (a) Macquarie Asset Management (**MAM**)², a specialist global asset manager with investments in a range of assets including electricity and gas distribution and gas transmission.³ It is active in the UK gas sector through its stake in Cadent⁴ and NGT. Cadent and NGT both hold a gas transporter licence.⁵
 - (b) Macquarie Capital (**MacCap**) holds a majority share ([x]%) in Matrix / UKPD. Matrix installs last mile electricity, gas and water connections, and adopts last mile electricity connections, through Matrix Networks.⁶ UKPD holds an electricity distribution licence.⁷
9. Macquarie's turnover (including its wider group of companies) for the year ending 31 March 2023 was £[x] worldwide and approximately £[x] in the UK.⁸
10. In the remainder of this decision, the CMA refers to Macquarie and/or MAM and/or MIRAEL and/or MEIF7 and/or MacCap, collectively as '**Macquarie**'.
11. Infracapital, headquartered in the UK, is the infrastructure equity investment business unit of M&G plc and manages funds through which it indirectly owns 100% of the issued share capital of LMI.⁹ LMI and its subsidiaries design, build, own and operate last mile utilities infrastructure, including electricity, gas, water, wastewater and heat connections in GB.¹⁰

¹ Final Merger Notice submitted to the CMA on 18 July 2024 (**FMN**), paragraph 4.

² MAM manages assets on behalf of third-party investors, acting through its portfolio manager, Macquarie Infrastructure and Real Assets (Europe) Limited (**MIRAEL**). Macquarie European Infrastructure Fund 7 SCSp (**MEIF7**), in turn, is a fund that is portfolio managed by MIRAEL and has a mandate to invest into assets across Europe. FMN, paragraph 23.

³ FMN, paragraph 23.

⁴ MAM manages a stake of approximately 26% in Cadent on behalf of its managed funds, noting that MAM's own direct ownership is approximately 12%. FMN, paragraph 24.

⁵ Merger Impact Assessment submitted to the CMA on 26 June 2024 (**Merger Impact Assessment**), paragraphs 9(a) and 9(c).

⁶ FMN, paragraphs 4 and 28(d).

⁷ Merger Impact Assessment, paragraph 9(c).

⁸ FMN, paragraph 42. The UK turnover of MEIF7 (including the wider Macquarie group of companies) for 2023 is not available. This figure reflects MEIF7 group's worldwide turnover, excluding its EU-wide turnover (FMN, footnote, 25).

⁹ FMN, paragraphs 3 and 32–33.

¹⁰ The LMI group of companies is made up of a number of businesses that provide last mile utility connections and metering services in GB, namely (a) Energetics Design & Build Limited, UK Power Solutions Limited, and Icosa Water Ltd active in installation/construction businesses; (b) Last Mile Electricity Limited, Icosa Water Services Limited, Last Mile Gas Limited and Last Mile Heat Limited, active in adoption; and (c) Last Mile Asset Management Limited, active in in-house asset management. FMN, paragraphs 5, 17–18.

12. LMI is active in the GB utilities sector through the following relevant subsidiaries, which are regulated by Ofgem:
 - (a) Last Mile Electricity Limited (**LME**) owns and manages last mile electricity connections and networks that connect customers to regional distribution network operators. It holds an electricity distribution licence¹¹; and
 - (b) Last Mile Gas Limited (**LMG**) owns a portfolio of last mile gas distribution networks and connections. It holds a gas transporter licence.¹²
13. LMI's GB turnover in the year ending 31 March 2024 was £[REDACTED].¹³

Merger

14. On 16 December 2023, Macquarie (through its group company Connex Bidco Limited) and Infracapital (through its managed funds) entered into a share purchase agreement,¹⁴ whereby Macquarie (via MEIF7) will indirectly acquire shares representing 50% of the total voting rights in LMI, through wholly owned intermediate companies, as well as loan notes and payment-in-kind notes issued by Last Mile Infrastructure HoldCo 2 Limited (a wholly owned subsidiary of LMI). The remaining shareholding and voting rights of LMI will be retained, indirectly, by Infracapital.¹⁵
15. The Parties informed the CMA that completion of the Merger is subject to approval from the Secretary of State under the National Security and Investment Act 2021, which was received on 8 March 2024, as well as merger control clearance by the European Commission, which was received on 26 February 2024.¹⁶

2. PROCEDURE

16. The CMA's mergers intelligence function identified the Merger as warranting an investigation.¹⁷
17. The CMA commenced its phase 1 investigation on 22 July 2024. As part of its phase 1 investigation, the CMA gathered evidence from the Parties. The evidence the CMA has gathered has been tested rigorously, and the context in which the evidence was produced has been considered when deciding how much weight to give it. Throughout its phase 1 investigation, in line with its guidance, the CMA

¹¹ Merger Impact Assessment, paragraph 4(c).

¹² Merger Impact Assessment, paragraph 4(d).

¹³ Email from Clifford Chance LLP to the CMA on 28 August 2024, 14:19.

¹⁴ Annex 8.001 to the FMN, 'Share Purchase Agreement – Executed 16 December 2023', December 2023.

¹⁵ FMN, paragraphs 3 and 7-8 and Annex 8.001 to the FMN, 'Share Purchase Agreement – Executed 16 December 2023', December 2023.

¹⁶ FMN, paragraph 14.

¹⁷ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), 25 April 2024, paragraphs 6.4–6.6.

also engaged with Ofgem and has taken Ofgem's opinion of the Merger into account.

18. Where necessary, this evidence has been referred to within this decision.
19. The CMA's assessment in this decision under the special energy network merger regime is independent of its separate assessment of the merger's effect on competition in the installation and adoption of last mile utility connections.¹⁸ The CMA approved the Merger on competition grounds under the Act in a separate phase 1 decision on 16 September 2024.

3. JURISDICTION

20. Each of the Parties holds one or more licences of the same type¹⁹, issued under the Gas Act 1986 (**GA1986**) and/or Electricity Act 1989 (**EA1989**), enabling it to carry out licensable activities in GB. Consequently, for the purposes of the special energy network merger regime, Macquarie and LMI is each an energy network enterprise of the same type. Upon completion, the Parties will cease to be distinct, and the CMA therefore considers the Merger to be an energy network merger which is subject to investigation under the special energy network merger regime, which was introduced into the Act by the Energy Act 2023.²⁰
21. The GB turnover of LMI exceeds £70 million in financial year 2024,²¹ 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 merger between two or more energy network enterprises of the same type (ie an energy network merger).
23. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 July 2024 and the statutory 40 working day deadline for a decision is therefore 16 September 2024.

¹⁸ If the businesses of both merging parties involve energy network enterprises of the same type, and also include other activities, the CMA will consider the parts of the transaction relating to the overlapping energy network enterprises under the special energy network merger provisions and the parts of the transaction relating to the parties' other activities under the general merger provisions of the Act. ([Energy network mergers: Guidance on the CMA's procedure and assessment \(CMA190\)](#), 3 April 2024, paragraph 1.3).

¹⁹ An energy network enterprise is an enterprise carried on by a company holding a licence under section 7 of GA1986 (gas transporter), section 6(1)(b) of EA1989 (transmission of electricity) or section 6(1)(c) of EA1989 (distribution of electricity), except in relation to the transmission or distribution of electricity, where the licence was awarded by way of a competitive tender (s.68A(2) EA02). [CMA190](#), paragraph 1.7 provides examples of two electricity distribution licensees or two electricity transmission licences.

²⁰ [CMA190](#), paragraph 2.10

²¹ Email from Clifford Chance LLP to the CMA on 28 August 2024, 14:19. LMI is active only in England, Wales and Scotland; Merger Impact Assessment, paragraph 5.

4. COUNTERFACTUAL

24. The CMA assessed the impact of the Merger on Ofgem's ability to carry out comparisons against the situation that would prevail in the absence of the Merger.²² Consistent with its approach to general phase 1 merger investigations, the CMA believes the most cautious realistic counterfactual is a situation where the Merger is assumed not to have occurred and the two firms continue to operate under independent ownership.

5. BACKGROUND

25. Historically, utility connections were supplied by state-owned network operators with exclusive areas of operation within the UK (also known as incumbents). Many of these operators were privatised in the 1990s in the UK and today utility connections are supplied by private operators, including new suppliers of utility connections.²³
26. Due to their historical monopoly status, the incumbents continue to maintain large infrastructure networks that connect to the original source of utilities.²⁴
27. In relation to gas, the incumbents are referred to as Gas Distribution Network operators (**GDNs**) and are regulated by Ofgem pursuant to GA1986. GDNs are responsible for operating and maintaining a structure of pipelines in set geographic regions and transporting gas through those pipelines from the national transmission system to end customers. Alongside the GDNs, independent gas transporters (**IGTs**), which are adoption businesses, provide last mile gas connections. IGTs must also operate under licences granted by Ofgem (ie a gas transporter licence).²⁵
28. In relation to electricity, the incumbents are referred to as Distribution Network Operators (**DNOs**) and are regulated by Ofgem pursuant to EA1989. DNOs are the equivalent of GDNs in electricity;²⁶ they provide electricity distribution networks and carry electricity from the transmission system to end users.²⁷ Alongside the DNOs, independent distribution network operators (**IDNOs**) which are adoption businesses, provide last mile electricity connections. IDNOs must also operate under licences granted by Ofgem (ie an electricity distribution licence).²⁸

²² [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

²³ FMN, paragraphs 82 and 105. Also, [Anticipated acquisition by Brookfield Asset Management Inc. of a minority shareholding in Scotia Gas Networks Limited](#), [ME/6960/21], (**Brookfield/SGN**), paragraph 46.

²⁴ FMN, paragraph 82.

²⁵ FMN, paragraph 87. Also, [Brookfield/SGN](#), paragraph 59.

²⁶ [Brookfield/SGN](#), paragraph 70.

²⁷ FMN, paragraph 502.

²⁸ FMN, paragraph 87.

29. As described above, Ofgem regulates the electricity and gas sector in GB, including granting, modifying and enforcing licences.²⁹ Ofgem also regulates the so-called ‘energy network enterprises’, which are regional monopolies in relation to the licensed services they provide and are regulated by Ofgem in accordance with its statutory duties.³⁰ Ofgem compares information between energy network enterprises to regulate prices and set incentives for energy network enterprises to promote choice and value for customers, improve their quality of service, and maintain a reliable and secure network.³¹

6. ASSESSMENT

6.1 Statutory framework

30. The intention of the special energy network merger regime is to ensure that a merger between two or more energy network enterprises of the same type in GB will not substantially prejudice Ofgem’s ability to make comparisons for the purpose of carrying out its statutory functions under Part 1 of GA1986 or Part 1 of the EA1989.³²
31. The CMA considers that an increase in common ownership or control across one or more companies has the potential to affect the ability of Ofgem to make comparisons.³³ This is because Ofgem adopts a comparative approach to estimate the performance levels and expenditure of a notional licensee by making comparisons of the actual and planned performance and expenditure of actual licensees. The number and quality of comparators is therefore of particular importance to econometric modelling since its statistical robustness depends on the number, independence, and degree of variation of observations.³⁴
32. For the purposes of its phase 1 assessment of an energy network merger, the CMA has interpreted the statutory test as requiring it to assess whether there is a realistic prospect that the Merger has caused, or may be expected to cause, substantial prejudice to Ofgem’s ability to make comparisons between energy network enterprises of the same type involved in the energy network merger.³⁵
33. Where the CMA finds that the energy network merger has substantially prejudiced, or is likely to substantially prejudice, Ofgem’s ability to make comparisons between

²⁹ [Industry licensing | Ofgem](#).

³⁰ An energy network enterprise is an enterprise carried on by a company holding a licence under section 7 of GA1986 (gas transporter), section 6(1)(b) of EA1989 (transmission of electricity) or section 6(1)(c) of EA1989 (distribution of electricity), except in relation to the transmission or distribution of electricity, where the licence was awarded by way of a competitive tender (s.68A(2) EA02). [CMA190](#), footnote 1 and paragraph 1.14.

³¹ [CMA190](#), paragraph 1.14.

³² [CMA190](#), paragraph 1.6.

³³ [CMA190](#), paragraph 4.13.

³⁴ [CMA190](#), paragraphs 4.7–4.8.

³⁵ [CMA190](#), paragraphs 2.2. and 4.2.

energy network enterprises, it may decide not to make a reference if that prejudice is outweighed by relevant customer benefits (**RCBs**) relating to the merger.³⁶

6.2 CMA approach

34. In the present case, the CMA has first assessed whether the Merger involves an increase in common ownership or control across one or more companies holding one or more licences of the same type. As discussed above in paragraphs 8 and 12, currently, both LMI (through LMG) and Macquarie (through Cadent and NGT) hold gas transporter licences. Both LMI and Macquarie (through LME and UKPD respectively) also hold electricity distribution licences. The CMA therefore considers that the Merger will result in LMI and Macquarie (who hold one or more licences of the same type) being brought under common ownership and control.
35. The CMA has also considered the views and evidence provided by the Parties and Ofgem³⁷ on both the likely prejudice, and the extent of such prejudice, on Ofgem's ability to make comparisons between energy network enterprises, and whether such prejudice is outweighed by RCBs.³⁸ Section 6.3 below discusses the Parties' submissions and Ofgem's Opinion with respect to the four criteria set out in Ofgem's approach to energy network mergers and statement of methods when assessing the likely impact of a merger on Ofgem's ability to make comparisons,³⁹ ie:
- (i) **Criterion 1:** Could the merger lead (or has the merger led) to a loss, or a deterioration in the quality of information available to Ofgem on a) the relationship between costs and performance; and b) exogenous drivers of costs and performance such as regional factors (eg urbanity, sparsity)?
 - (ii) **Criterion 2:** Could the merger lead (or has the merger led) to a loss, or a deterioration in the quality of information available to Ofgem on good performance/behaviours and efficient levels of costs?
 - (iii) **Criterion 3:** Could the merger lead (or has the merger led) to a reduction in the diversity of management approaches and practices in a way that adversely affects the availability of information of good performance and efficient levels of costs?
 - (iv) **Criterion 4:** Could the merger lead (or has the merger led) to a reduction in rivalry between network enterprises in a way that adversely

³⁶ [CMA190](#), paragraph 2.3.

³⁷ Ofgem's opinion on the proposed acquisition by Macquarie Asset Management of a 50% (jointly controlling) interest in Last Mile Infrastructure (Holdings) Limited submitted to the CMA on 13 August 2024 (**Ofgem's Opinion**).

³⁸ [CMA190](#), paragraph 2.4.

³⁹ See, [Ofgem's approach to energy network mergers and statement of methods](#), part 7.

affects the incentive of individual licensees to pursue performance improvements and cost efficiencies?⁴⁰

36. In assessing the impact of the Merger on Ofgem's ability to make comparisons, the CMA has further considered (including but not limited to) the following factors: the number and quality of independent observations that remain, and the loss of an independent comparator or the loss of a company with important similarities or differences.⁴¹

6.3 Ofgem's criteria for the assessment of the impact of a merger

37. This section addresses each of the four criteria referred to in paragraph 35 in turn below.

6.3.1 Loss or deterioration in quality of information on relationships between costs/ cost drivers and performance

38. The Parties and Ofgem made submissions on whether the Merger could lead to a loss, or a deterioration in the quality, of information available to Ofgem on: a) the relationship between costs and performance; and b) exogenous drivers of costs and performance such as regional factors (eg urbanity, sparsity).⁴²
39. The Parties submitted that the possibility of prejudice does not arise as LMI's and Matrix's data on costs and volumes were not used in the cost benchmarking to set allowed revenues for GDNs and DNOs.⁴³ This includes when Ofgem:
- (a) applies output targets and incentives under the RIIO⁴⁴ price control frameworks, which are enforced through licence obligations and price control deliverables. These are intended to drive ongoing performance improvements and apply only to GDNs and DNOs. The Parties added that Ofgem also used output delivery incentives (**ODIs**) to ensure GDNs and DNOs were encouraged to deliver performance improvements but that it did not need to use ODIs to incentivise IGTs and IDNOs due to the different regulatory model and competition in the market for connection adoptions;⁴⁵
 - (b) sets uncertainty mechanisms, which are intended to benefit GDNs and DNOs by insulating them from risks that are outside of management's control;⁴⁶ and

⁴⁰ [CMA190](#), paragraph 4.12. and [Ofgem's approach to energy network mergers and statement of methods](#), part 7.

⁴¹ [CMA190](#), paragraph 4.14.

⁴² [CMA190](#), paragraph 4.12.

⁴³ Merger Impact Assessment, paragraph 21.

⁴⁴ RIIO stands for Revenue = Incentives + Innovation + Outputs. Merger Impact Assessment, footnote 6.

⁴⁵ Merger Impact Assessment, paragraphs 22–24.

⁴⁶ Merger Impact Assessment, paragraphs 25–26.

(c) uses the ongoing efficiency adjustment mechanism that is intended to reflect the rate at which the networks can improve productivity due to changes in technology and working practices.⁴⁷

40. Ofgem submitted that it did not rely on the data provided by the Parties in relation to any of the qualitative assessments relating to criterion 1. Instead, it submitted that those assessments relied on information provided by DNOs and GDNs, and not those encompassed by this Merger. Ofgem accepted that no possibility of prejudice was likely to arise and took comfort from the Parties' strong assurances that the entities would remain operationally separate in the future.⁴⁸

6.3.2 Loss or deterioration of quality of information on good performance and efficient levels of cost

41. The Parties and Ofgem made submissions on whether the Merger could lead to a loss, or a deterioration in the quality, of information available to Ofgem on good performance/behaviours and efficient levels of costs.

42. The Parties' submissions in relation to this criterion were two-fold.

(a) First, the Parties submitted that when setting price controls for GDNs and DNOs, Ofgem reviewed the historical expenditures and business plan forecasts of those companies and applied comparative benchmarking to identify the 'efficient' level of expenditure. For this purpose, it relies on outturn and forecast data provided by GDNs and DNOs, and not IGTs and IDNOs. Given this, the Parties submitted that there was no possibility of prejudice,⁴⁹ and

(b) Second, the Parties submitted that while Ofgem collected information from LMI and Matrix on its compliance with quality and performance standards, it also collected this information from the 8 GDNs, 14 DNOs, 19 IDNOs and 21 IGTs operating in the market. The Parties added that in any event the quality of information would not be affected as LMI would be held separately from Matrix. Therefore, the risk of prejudice would be minimal.⁵⁰

43. Ofgem submitted that the Merger would not adversely affect its ability to compare network enterprises as it did not currently rely on information from IDNOs and IGTs to set efficient levels of expenditure for network companies or to set performance targets. Ofgem further reiterated its reliance on the Parties'

⁴⁷ Merger Impact Assessment, paragraphs 27–28.

⁴⁸ Ofgem's Opinion, paragraph 3.10.

⁴⁹ Merger Impact Assessment, paragraphs 30–31.

⁵⁰ Merger Impact Assessment, paragraphs 32–34.

assurances that LMI will continue to be held wholly separately from UKPD and that there will be a continuation of separate reporting by Macquarie.⁵¹

6.3.3 Reduction in diversity of management approaches and practices

44. The Parties and Ofgem made submissions on whether the merger could lead to a reduction in the diversity of management approaches and practices in a way that adversely affects the availability of information of good performance and efficient levels of costs.
45. The Parties submitted that under the RIIO framework, network companies must submit a business plan which Ofgem would use to inform its decision on the allowed revenues and outputs. However, IDNOs and IGTs do not submit business plans to Ofgem and therefore, their information was unlikely to be significant in encouraging diversity of management approach and practices. The Parties further submitted that LMI would be held separately from Matrix and as such there will be no impact on the diversity of management approaches that currently exist between them.⁵²
46. Ofgem submitted that the Merger would not adversely affect its ability to compare the diversity of management approaches for DNOs and GDNs. This is because Ofgem does not currently collect such information from IDNOs and IGTs. Ofgem further submitted that it was also unlikely that the Merger would lead to a reduction in a diversity of management approaches on the basis of the Parties' assurances that LMI would continue to be held wholly separately from Matrix.⁵³

6.3.4 Reduction in rivalry between network enterprises that affects incentives for cost efficiency and performance enhancement

47. The Parties and Ofgem made submissions on whether the Merger could lead to a reduction in rivalry between network enterprises in a way that adversely affects the incentive of individual licensees to pursue performance improvements and cost efficiencies.
48. The Parties submitted that Ofgem did not collect data from LMI and Matrix to use in the cost benchmarking for setting allowed revenues for GDNs and DNOs, or to set performance targets. Instead, LMI's and Matrix's incentives for performance improvement are driven through the competitive process and were not subject to

⁵¹ Ofgem's Opinion, paragraph 3.13.

⁵² Merger Impact Assessment, paragraphs 35–39.

⁵³ Ofgem's Opinion, paragraph 3.16.

regulatory oversight.⁵⁴ The Parties reiterated that Matrix and LMI would continue to be operated independently.⁵⁵

49. With respect to third-party adoption of electricity connections, the Parties further submitted that LMI and Matrix:
- (a) are not close competitors, in that Matrix's offering is more limited than LMI's;
 - (b) continue to face strong competition from key IDNO competitors, including BUUK, Energy Assets, ESP, Fulcrum, Indigo Power, Leep, MUA and others; and
 - (c) will continue to be constrained by significant buyer power exercised by housebuilders, developers, I&C customers and ICPs.⁵⁶
50. With respect to the third-party adoption of gas connections, the Parties further submitted that there was little or no meaningful competition between LMI and Cadent as Cadent did not actively compete to adopt connections. The Parties also submitted that the markets are highly competitive and fragmented, and the Parties would continue to be constrained by counterparties with significant countervailing buyer power.⁵⁷
51. Ofgem submitted that it did not use LMI's or Matrix's data for setting allowed revenues for GDNs and DNOs, or to set performance targets and did not consider it likely that the Merger would adversely impact the incentive of the individual licensees to pursue performance improvements and cost efficiencies.⁵⁸
52. Ofgem further submitted that the Merger would not adversely impact the incentives of the individual licensees to pursue performance improvements and cost efficiencies as there is a sufficient level of competition in the market based on the Parties' shares of supply and the degree of substitutability between their offerings, in addition to the Parties' assurances about the extent to which the businesses would become integrated post-Merger. However, Ofgem also submitted that this is not a sector in which it routinely collects market information, so it was unable to assess independently the veracity of the Parties' statements.⁵⁹

6.4 CMA assessment and conclusion

53. In reaching its decision at phase 1 the CMA places significant weight on Ofgem's opinion on whether a merger is likely to prejudice its ability in carrying out its

⁵⁴ Merger Impact Assessment, paragraphs 41–42.

⁵⁵ Merger Impact Assessment, paragraph 49.

⁵⁶ Merger Impact Assessment, paragraphs 43–48.

⁵⁷ Merger Impact Assessment, paragraphs 50–52.

⁵⁸ Ofgem's Opinion, paragraphs 3.21.

⁵⁹ Ofgem's Opinion, paragraphs 3.21–3.22.

functions and to make comparisons between energy network enterprises. The prospect of a clearance at phase 1, on the basis of a lack of substantial prejudice, is likely to be higher when the views of the Parties and Ofgem on the impact of a merger are relatively aligned.⁶⁰

54. The CMA considered the Parties' submissions and Ofgem's Opinion as set out above that the Merger is not expected to prejudice Ofgem's ability to carry out its functions under Part 1 of GA86 or Part 1 of EA89 to make comparisons between network enterprises of the type involved in this Merger.
55. The CMA considers that the views of the Parties and Ofgem on the impact of the Merger are broadly aligned, in that Ofgem confirms that it does not rely on data provided by the Parties (who function as IGTs and IDNOs) for the purposes of making comparisons. Instead, for the purposes of carrying out assessments to set allowed revenues for GDNs and DNOs, performance targets or to set out allowed revenues – Ofgem relies on information provided by GDNs and DNOs themselves.
56. Whilst Ofgem confirmed that it did not rely on data provided by the Parties, it also noted the assurances provided by the Parties that the enterprises will continue to be run independently and existing information barriers will be maintained. The CMA places less reliance on these assurances as it would be open to the Parties to alter these arrangements in the future.
57. The CMA considers that since the Merger will not lead to a reduction in the number of comparators, ie the GDNs or DNOs, currently operating in the market or a loss of an independent comparator, the Merger is not likely to substantially prejudice Ofgem's ability to make comparisons.
58. For the reasons set out above, the CMA has found that the Merger is not likely to cause substantial prejudice to the ability of Ofgem to make comparisons between energy network enterprises.

6.5 Relevant customer benefits

59. As the CMA has concluded that the Merger does not give rise to substantial prejudice to Ofgem's ability to make comparisons, it is not necessary to consider RCBs in this decision.

⁶⁰ [CMA190](#), paragraph 4.17.

DECISION

60. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to cause substantial prejudice to the ability of Ofgem to make comparisons between energy network enterprises.
61. The Merger will therefore not be referred under section 68C(1) of the Act.

Jenny Sugiarto
Director, Mergers
Competition and Markets Authority
16 September 2024