

# **Completed Acquisition by Iberdrola, S.A., through its Subsidiary Scottish Power Energy Networks Holdings Limited, of North West Electricity Networks (Jersey) Limited**

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

**ME 7118/24**

The Competition and Markets Authority's decision on relevant merger situation and substantial lessening of competition under section 22(1) of the Enterprise Act 2002 given on 20 March 2025. Full text decision published on 1 May 2025.

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 Some numbers have been replaced by a range, which are shown in square brackets.

# SUMMARY

## OVERVIEW OF THE CMA'S DECISION

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Iberdrola S.A. (**Iberdrola**) of North West Electricity Networks (Jersey) Limited (**NWEN**) (the **Merger**), is a relevant merger situation that does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**).
2. Iberdrola is active in the UK electricity sector through its stake in ScottishPower group (**SP**). Iberdrola and its subsidiaries design, build, own and operate utilities infrastructure, including electricity connections in Great Britain (**GB**).
3. Iberdrola and NWEN 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 mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so. In this case, the CMA has concluded that the CMA has jurisdiction to review this Merger because: a relevant merger situation has been created; each of Iberdrola and NWEN is an enterprise; these enterprises have ceased to be distinct as a result of the Merger; and the turnover test is met.
5. The CMA has also considered the Merger further to its duty under section 68B of the Enterprise Act 2002 (the **Act**) in connection with mergers of energy network enterprises and decided not to refer the Merger to a phase 2 investigation in a separate decision on 20 March 2025.

## Assessment

6. In this case, the CMA has assessed the Merger against a counterfactual of the prevailing conditions of competition.
7. In assessing the Merger, the CMA considered a wide range of evidence from the Parties, and companies and organisations that are active in the Parties' industries. In line with this evidence, the CMA considered the following two theories of harm: (i) horizontal unilateral effects leading to loss of potential future competition in the third-party adoption of multi-unit last-mile electricity connections; and (ii) input foreclosure of third-party independent distribution network operators (**IDNOs**) by the Merged Entities' respective distribution network operators (**DNOs**).
8. The CMA found no concerns on either theory of harm.
9. The Merger will therefore **not be referred** under section 22(1) of the **Act**.

# ASSESSMENT

## 1. PARTIES, MERGER AND MERGER RATIONALE

### 1.1 Parties

1. Iberdrola is a global energy and integrated utilities company headquartered in Spain and listed on the Spanish Stock Exchanges. In the UK, Iberdrola is active through SP, which is active in the renewable generation, transmission and distribution of electricity, energy management and the supply of electricity and gas in the UK.<sup>1</sup>
2. The turnover of Iberdrola in [2023] was approximately £42 billion worldwide and approximately £[9] billion in the UK.<sup>2i</sup>
3. NWEN is a Jersey incorporated company, that owns and operates Electricity North West Limited (**ENWL**), a English & Welsh incorporated company that distributes electricity in the North West of England. NWEN and ENWL, along with certain other group companies, form the Electricity North West (**ENW**) group.<sup>3</sup>
4. The turnover of NWEN in the financial year of 2024 was approximately £623 million, all of which was in the UK.<sup>4</sup>

### 1.2 Merger

5. On 2 August 2024, Iberdrola entered into an agreement to acquire 85.63% of the issued shares of NWEN for approximately £2.1 billion, together with a subscription for an additional 2.37% of shares in NWEN. The agreement was novated to Scottish Power Energy Networks Holdings Limited on 30 September 2024.<sup>5</sup>
6. The Parties also informed the CMA that the completion of the Merger was subject to approval from the Secretary of State under the National Security and Investment Act 2021, which was received on 7 October 2024.<sup>6</sup>

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<sup>1</sup> Final Merger Notice submitted to the CMA on 299 January 2025 (**FMN**), page 5.

<sup>2</sup> Annex 006 to the FMN, page 1 and FMN, paragraph 6.1. The turnover figures have been converted from euros to Great British Pounds using the Bank of England's exchange rate on 19 March 2025 (1.1884).

<sup>3</sup> FMN, paragraphs 2.3 and 3.1.

<sup>4</sup> FMN, paragraph 3.5.

<sup>5</sup> FMN, paragraph 2.8. Iberdrola indicated that its rationale for the Merger was to (i) reinforce Iberdrola's commitment to both the UK and electricity networks as a driver of growth and Net Zero, with the addition of a high-quality asset to its global network portfolio and (ii) unlock the [3<] from the [3<] geographical and business fit between SP Energy Networks and NWEN's electricity distribution operations in contiguous service areas; see paragraph 2.23 and 2.24 of the FMN. NWEN did not indicate a rationale for the Merger; see paragraph 2.25 of the FMN.

<sup>6</sup> FMN, paragraph 2.13, and an email from [3<] received on 7 October 2024.

## 2. PROCEDURE

7. The CMA's mergers intelligence function identified the Merger as warranting an investigation.<sup>7</sup> The CMA announced the launch of its phase 1 investigation by notice to the Parties on 29 January 2025.
8. The CMA has also considered the Merger further to its duty under section 68B of the Act in connection with mergers of energy network enterprises and decided not to refer the Merger to a phase 2 investigation in a separate decision on 20 March 2025.

## 3. JURISDICTION

9. Each of Iberdrola and NWEN is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
10. The UK turnover of NWEN exceeds £70 million in 2024, so the turnover test in section 23(1)(b) of the Act is satisfied.<sup>8</sup>
11. The Merger completed on 22 October 2024 and the CMA was informed of this the same day.<sup>9</sup> Following extensions to the statutory four-month deadline under sections 25(1) and 25(2) of the Act, the four-month deadline for this decision under section 24 of the Act is 3 April 2025.
12. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
13. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 30 January 2025 and the statutory 40 working day deadline for this decision is therefore 27 March 2025.

## 4. COUNTERFACTUAL

14. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).<sup>10</sup> The Parties submitted that the relevant counterfactual against which to assess the Merger is the pre-Merger conditions of competition, and in this case, the CMA agrees.<sup>11</sup> Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

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<sup>7</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), 25 April 2024, paragraphs 6.4–6.6.

<sup>8</sup> FMN, paragraph 5.4. Section 23(1)(b) of the Act, as amended, now provides for a £100 million turnover test, but the £70 million threshold continues to apply to mergers which completed before 1 January 2025. See [SI 2024/1226](#), Schedule, paragraph 5.

<sup>9</sup> Email from the Parties to the CMA dated 22 October 2024.

<sup>10</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

<sup>11</sup> FMN, paragraph 10.1.

## 5. COMPETITIVE ASSESSMENT

### 5.1 Market definition

15. The CMA considers that the activities relevant to the assessment of the Merger are the adoption of last mile electricity connections.<sup>12</sup>

#### 5.1.1 Product market

##### 5.1.1.1 *Last mile electricity connections*

16. In *Brookfield/SGN*, the CMA considered that the adoption of last mile utility connections should be segmented by development size, ie between larger and smaller developments. It considered that non-incumbent installers and adopters generally do not consider smaller developments to be commercially attractive as these are less profitable than larger developments. It also assessed installation and adoption of connections, and electricity and gas connections, separately.<sup>13</sup>
17. The CMA has not found evidence that warrants either narrowing or widening the market beyond the definitions used in *Brookfield/SGN*.

##### 5.1.1.2 *Electricity network distribution*

18. The Parties are each active as DNOs. DNOs are regional monopolies that are regulated by Ofgem.<sup>14</sup> Accordingly, in order to assess this Merger, the CMA has defined a separate product market for the electricity network distribution activities of DNOs.

#### 5.1.2 Geographic market

##### 5.1.2.1 *Last mile electricity connections*

19. In *Brookfield/SGN*, the CMA considered that competition in the adoption of last mile electricity connections largely takes place on a GB-wide basis.<sup>15</sup>

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<sup>12</sup> 'Adoption' involves the ownership and long-term management of the physical infrastructure required to activate last mile electricity connections. Suppliers that adopt a connection installed by another company (and therefore are not involved in any installation) are referred to as third-party adopters (see Anticipated acquisition by Macquarie Asset Management of a jointly controlling interest in Last Mile Infrastructure (Holdings) Limited, ME7095/24 (**Macquarie/LMI**), paragraph 54.)

<sup>13</sup> [Anticipated acquisition by Brookfield Asset Management Inc. of a minority shareholding in Scotia Gas Networks Limited](#), ME/6960/21 (**Brookfield/SGN**), paragraphs 103-105.

<sup>14</sup> [A guide to electricity distribution connections policy](#), paragraph 2.1.

<sup>15</sup> *Brookfield/SGN*, paragraph 129.

20. The CMA has not received any evidence that warrants narrowing the market beyond this national definition.<sup>16</sup>

#### 5.1.2.2 *Electricity network distribution*

21. As noted at paragraph 18 above, DNOs are regional monopolies.<sup>17</sup> Accordingly, the CMA considers that each of the Parties' licence areas is a relevant geographic market. For Iberdrola (via its interest in SP holdings), its licence area includes Central & Southern Scotland, Merseyside, North Wales, Cheshire and North Shropshire (**Iberdrola's Region**).<sup>ii</sup> For NWEN, its licence area includes the North West of England (**NWEN's Region**). Together, Iberdrola's Region and NWEN's Region is referred to as the **Parties' Regions**.
22. The CMA has not received any evidence that suggests widening or narrowing the scope of the market for electricity network distribution beyond the Parties' Regions.

#### 5.1.3 **Conclusion on market definition**

23. Accordingly, the CMA has assessed the impact of the Merger on:
- (a) the third-party adoption of multi-unit last-mile electricity connections in GB;<sup>18</sup> and
  - (b) electricity network distribution in the Parties' Regions.

### 5.2 **Theories of harm**

24. In its investigation of this Merger, the CMA has considered the following theories of harm:
- (a) horizontal unilateral effects leading to loss of potential future competition in the third-party adoption of multi-unit last-mile electricity connections in GB (**Theory of Harm 1**); and
  - (b) vertical input foreclosure of third party IDNOs by the Merged Entities' respective DNOs (**Theory of Harm 2**).
25. Each of these theories of harm is considered below.

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<sup>16</sup> In the context of vertical concerns, regional markets were considered in Macquarie/LMI. Therefore, we have considered regional markets in Theory of Harm 2, below.

<sup>17</sup> [A guide to electricity distribution connections policy](#), Paragraph 2.1.

<sup>18</sup> FMN, paragraph 12.12.

### 5.2.1 Theory of Harm 1

26. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC arising from the loss of potential future competition in the third-party adoption of multi-unit last-mile electricity connections.
27. When considering whether a merger involving a potential entrant leads to a loss of future competition between the merging parties, the CMA will consider evidence on:<sup>19</sup>
- (a) whether either party would have entered or expanded absent the merger; and
  - (b) whether the loss of future competition brought about the merger would give rise to an SLC, taking into account other constraints and potential entrants.

#### 5.2.1.1 Likelihood of entry

28. The Parties submitted that neither SP nor NWEN are currently active in the market for the third-party adoption of multi-unit last-mile electricity connections in GB, but both are considering entry via launching an IDNO.<sup>20</sup> This position is supported by the Parties' internal documents.<sup>21</sup>
29. Therefore, the CMA considers that on the evidence it has seen, there is a realistic prospect that each of the Parties would have entered the market for the third-party adoption of multi-unit last-mile electricity connections in GB absent the Merger.

#### 5.2.1.2 Likelihood of SLC

30. The CMA has assessed whether the Merger would result in a substantial loss of future competition in the market for the third-party adoption of multi-unit last-mile electricity connections in GB.

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<sup>19</sup> [CMA129](#), paragraph 5.7.

<sup>20</sup> SP stated that it plans to submit its initial licence application to Ofgem in Q1 2025 (and estimates that it would take between 12 to 18 months to launch an IDNO). NWEN stated it is in a planning phase for launching its IDNO; FMN, paragraphs 16.47 and 16.53.

<sup>21</sup> Iberdrola's internal document, Annex 137 to the FMN, '[§<]', 1 October 2024, slide 4; Iberdrola's internal document, Annex 136 to the FMN, '[§<]', 14 November 2024, slide 3.

#### 5.2.1.2.1 *Market structure*

31. The Parties submitted that there are a significant number of licensed IDNOs operating in GB, with 21 licensed IDNOs for the adoption of electricity connections.<sup>22</sup>
32. While the CMA did not receive sufficient data from either the Parties or third party IDNOs to enable it to reconstruct shares of supply, the CMA has received evidence from third parties and internal documents that support the Parties' submissions that there are a significant number of licensed IDNOs operating in GB (see paragraphs 36 to 37 below).

#### 5.2.1.2.2 *Closeness of competition*

33. The Parties are not yet active in the market. In this context, the CMA has found only limited evidence on the closeness with which the Parties can be expected to compete. The evidence includes the following:
- (a) First, an SP strategy document from October 2024 forecasts that SP will obtain [X] [0-5]% share by 2030, and [10-20]% by 2035.<sup>23</sup>
  - (b) Second, the CMA considers that the Parties' internal documents [X] over other suppliers. For example, one internal document discusses [X] (and in particular [X]) as being important, noting this is a risk. The same document discusses some additional expertise from the wider Iberdrola Group. While '[X]' as a result of SP '[X]' is listed as being one of a number of 'critical' items, other items such as '[X]' and '[X]' are listed as being 'immaterial'.<sup>24</sup>
  - (c) Finally, third parties indicate that the most important factors to customers when making purchasing decisions are competitive pricing and reputation.<sup>25</sup>
34. Therefore, the evidence received by the CMA does not indicate that the Parties would compete more closely with each other than with any other IDNOs that are currently active in the market.
35. Accordingly, the CMA considers that the Parties are not likely to be particularly close competitors.

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<sup>22</sup> Parties' response to CMA's Request for Information 5, 23 January 2025, paragraph B; FMN, paragraphs 16.36 and 16.38. The limited share of supply estimates available to the Parties include the CMA's estimated shares of supply in Brookfield/SGN for the third-party adoption of electricity connections on a GB-basis in 2019 and 2020, [X]. The Parties further submit that they are unaware of any third-party data source that provides share of supply estimates.

<sup>23</sup> Iberdrola's internal document, Annex 137 to the FMN, "[X]", October 2024, page 180.

<sup>24</sup> Iberdrola's internal document, Annex 137, '[X]' to the FMN, 1 October 2024, slide 170.

<sup>25</sup> Responses to the CMA's customer questionnaire from a third party, January 2025.



### 5.2.1.2.3 *Competitive constraints*

36. In the market for the third-party adoption of multi-unit last-mile electricity connections in GB, there are a large number of incumbent IDNOs, with several new entrants in the last decade.
- (a) One third-party stated that there are 21 licensed IDNOs and that 16 of these are currently active.<sup>26</sup> Together, customers and competitors listed over 10 IDNOs adopting multi-unit last-mile electricity connections in the GB.<sup>27</sup>
  - (b) One competitor told the CMA that at least 10 IDNOs (including themselves) operate at scale and also provide last mile connections across other utilities (such as gas and water) to all DNOs across the country. As such, where offering connections for multiple utilities is important to their customers, existing IDNOs can already compete to provide last mile connections.<sup>28</sup>
37. In addition to the large number of incumbent IDNOs in this market there are also three larger players, namely BUUK, LMI and ESP.
- (a) An internal document produced for SP in anticipation of market entry states that [REDACTED].<sup>29</sup>
  - (b) A second SP strategy document from October 2024 states that [REDACTED].<sup>30</sup>
38. The CMA also asked customers the relative strengths of the incumbent IDNOs.
- (a) On average, customers rated over 10 of the 16 incumbent IDNOs as strong or very strong.<sup>31</sup>
  - (b) No customer considered any of the IDNOs that they identified as very weak.<sup>32</sup>
39. The CMA also asked customers how likely they would be to switch to a new IDNO provider if, for example, it charged a lower price or provided preferable services, to which several responded that they would be likely to switch.<sup>33</sup> For example:

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<sup>26</sup> Submission to the CMA from a third party, November 2024.

<sup>27</sup> This position is consistent with the Parties' internal documents. See, for example, Iberdrola's internal document, Annex 130 to the FMN, "[REDACTED]", January 2024, pages 5 and 18. Submission to the CMA from a number of third parties, November 2024.

<sup>28</sup> Note of call with a third party, 4 December 2024, paragraph 4.

<sup>29</sup> Iberdrola's internal document, Annex 129 to the FMN, "[REDACTED]", slide 9.

<sup>30</sup> Iberdrola's internal document, Annex 137 to the FMN, "[REDACTED]", October 2024, page 187.

<sup>31</sup> Responses to the CMA's customer questionnaire from a third party, January 2025.

<sup>32</sup> Response to the CMA's IDNO questionnaire from a third party, January 2025.

<sup>33</sup> Responses to the CMA's customer questionnaire from a third party, January 2025.

- (a) One customer stated that they would engage with a new IDNO as they have the comfort of knowing that they are regulated.<sup>34</sup>
- (b) Another customer stated that they would consider any new providers who have passed the necessary regulatory approvals and are able to offer competitive value.<sup>35</sup>

40. Overall, the evidence indicates a strong constraint from incumbent IDNOs.

#### 5.2.1.3 *Conclusion on Theory of Harm 1*

- 41. For the reasons set out above, the CMA considers that neither Party is currently active in the market for the third-party adoption of multi-unit last-mile electricity connections, and while there is a realistic prospect of entry by both Parties, they would each face strong competitive constraints from the 16 active and incumbent IDNOs, and particularly from those such as BUUK and Last Mile.
- 42. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of loss of potential future competition in the third-party adoption of multi-unit last-mile electricity connections in GB.

#### 5.2.2 **Theory of Harm 2**

- 43. In light of the conclusion at paragraph 41 that there is a realistic prospect of entry into the market for the third-party adoption of multi-unit last-mile electricity connections in GB, the CMA has also considered an input foreclosure theory of harm. The concern with an input foreclosure theory of harm is that a 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.<sup>36</sup>
- 44. In assessing this concern, the CMA considers whether the following three cumulative conditions are satisfied:
  - (a) would the merged entity have the ability to use its control of inputs to harm the competitiveness of its downstream rivals;
  - (b) would it have the incentive to actually do so, ie would it be profitable; and

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<sup>34</sup> Response to the CMA's customer questionnaire from a third party, January 2025.

<sup>35</sup> Response to the CMA's customer questionnaire from a third party, January 2025.

<sup>36</sup> MAGs, paragraph 7.9.

- (c) would the foreclosure of these rivals substantially lessen overall competition.<sup>37</sup>

45. The CMA has considered these cumulative conditions below. Specifically, the CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of input foreclosure of third-party IDNOs by the Merged Entity's respective DNOs. As described above in paragraphs 28 to 29, the CMA considers that there is a realistic prospect that each of the Parties would have entered the market for the third-party adoption of multi-unit last-mile electricity connections in GB absent the Merger, as IDNOs. Concerns about input foreclosure could only arise in the context of this potential entry.

#### 5.2.2.1 *Parties' submissions*

46. The Parties submitted that they would not have the ability or the incentive to favour their own IDNOs over third-party IDNOs by: (i) slowing down the speed at which the Merged Entity approves last mile electricity connections to its network by rival IDNOs; (ii) quoting a higher price to rivals; or (iii) withholding important information from rival IDNOs. The Parties further submit that Ofgem's regulatory framework (which DNOs operate within) prevents DNOs from discriminating between IDNOs, particularly given the threat of financial penalties for non-compliance.<sup>38</sup>

#### 5.2.2.2 *CMA assessment*

47. The CMA has considered whether the Parties' DNOs could harm the competitiveness of rival IDNOs in the Parties' Regions in order to advantage their own IDNOs, for example by offering a slower or more expensive service or by withholding information.

##### 5.2.2.2.1 *Ability*

48. First, the CMA considered whether the Merged Entity would have the ability to use its control of inputs to harm the competitiveness of its downstream rivals.
49. In terms of upstream market power, the Parties' DNOs are the monopoly owners of upstream electricity distribution in each of the Parties' Regions. IDNOs need to register connection requests with the incumbent DNO of the region in which they are adopting last-mile electricity connections.<sup>39</sup> As such, absent any regulatory oversight, DNOs would have the ability to act in ways which may distort competition between IDNOs downstream.

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<sup>37</sup> [CMA129](#), paragraphs 7.9 to 7.10.

<sup>38</sup> FMN, paragraph 18.51.

<sup>39</sup> FMN, paragraphs 12.3 and 12.17b.

50. DNOs provide a necessary input to IDNOs, who would be unable to operate without connections to the regional DNO's network.
51. For the reasons set out above, the CMA considers that as DNOs are responsible for approving the electricity network connection requests of IDNOs, the Merged Entity would have the ability to engage in a foreclosure strategy. However, the ability of DNOs to act in ways which distort competition between IDNOs downstream is constrained by regulation (see below). Accordingly, the CMA considers that the Parties would have only limited ability to harm the competitiveness of downstream rivals.

#### 5.2.2.2.2 *Incentive*

52. Second, the CMA assessed whether the Merged Entity would have the incentive to foreclose rival IDNOs, taking into account the benefits to the Merged Entity (ie increased profits downstream) and the costs.<sup>40</sup>
53. As regards any benefits from foreclosure:
- (a) The CMA found some internal documents which indicate that SP's hypothetical IDNO [X].<sup>41</sup> However, as described above in paragraph 33, the [X].
  - (b) Customers told the CMA that they were aware of existing ownership of IDNOs by DNOs, such as SSE's ownership of Optimal Power Networks.<sup>42</sup> No customer told the CMA that they would prefer to award their business to an IDNO that is owned by a DNO.<sup>43</sup>
  - (c) The CMA asked competitors whether an IDNO would have any competitive advantages of being owned by a DNO.
    - (i) Most competitors stated that there were some advantages.<sup>44</sup> For example, one competitor indicated benefits that may improve the service for customers, such as technical expertise.<sup>45</sup>
    - (ii) However, only one competitor indicated that the DNO could provide preferential treatment, but this competitor also noted that Ofgem has licence provisions that could mitigate this risk.<sup>46</sup>

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<sup>40</sup> The Merged Entity would have an incentive to foreclose where the benefits are greater than the costs. [CMA129](#), paragraph 7.16.

<sup>41</sup> For example, a 2024 document states that [X]; Iberdrola's internal document, Annex 137 to the FMN, "[X]", October 2024, page 4.

<sup>42</sup> Response to the CMA's questionnaire from a third party, January 2025. See also, [X].

<sup>43</sup> Responses to the CMA's questionnaire from third parties, January 2025

<sup>44</sup> Response to the CMA's questionnaire from a third party, January 2025.

<sup>45</sup> Response to the CMA's questionnaire from a third party, January 2025.

<sup>46</sup> Response to the CMA's questionnaire from a third party, January 2025.

- (iii) No competitor expressed concerns related to foreclosure by a DNO through slowing the speed of service, price, or restriction of information.
  - (d) Third parties told the CMA that, in practice, no preferencing currently occurs or has occurred in the past where DNOs have owned IDNOs.<sup>47</sup>
- 54. Accordingly, on the basis of the available evidence, the CMA considers that there would be limited benefits from foreclosure.
- 55. As regards any costs of foreclosure:
  - (a) Ofgem subjects DNOs to Standard Conditions under their regulatory framework that limit the ability of DNOs to preference their own IDNO, including a duty to avoid undue preference or discrimination, a requirement that prices for new connections are set in accordance with Ofgem's charging methodology, and controls that restrict the DNO's access to its customers' confidential information.<sup>48</sup>
  - (b) The CMA understands that any breach by a DNO may result in enforcement action by Ofgem, such as, financial penalties, modifications to the licence, and orders. Such penalties and orders are also published. Ofgem confirmed to CMA that while potential breaches are assessed on a case-by-case basis, Ofgem has a broad range of powers to sanction regulated entities in breach of their licence conditions.<sup>49</sup> For example, Ofgem could impose financial penalties (up to 10% of turnover), provisional orders, final orders, consumer redress order or revoke the DNO's licence.
- 56. The CMA recognises that it may be difficult for Ofgem to detect certain breaches by DNOs. However, the CMA considers that the risk of enforcement is likely to act as an effective deterrent, increasing the cost of foreclosure and limiting the incentive for any discriminatory behaviour by the Parties.
- 57. Therefore, for the reasons set out above, the CMA considers that the Merged Entity would not have incentive to engage in a foreclosure strategy.

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<sup>47</sup> For example, one third party told the CMA that arrangements between a DNO and IDNO "need to be on an arm's length basis" and that they do not consider it possible for a DNO to preference its own IDNO. Submission to the CMA from a third party, November 2024. One competitor stated that while there could be advantages in consolidating processes, DNOs aren't able to preference their own IDNO's and referenced [§<]. Note of call with a third party, 4 December 2024, paragraphs 6 and 14.

<sup>48</sup> FMN, paragraphs 18.16-18.27. See also [Electricity Distribution Consolidated Standard Licence Conditions](#) published by Ofgem.

<sup>49</sup> Email from Ofgem on 20 March 2025.

#### 5.2.2.2.3 *Effect*

58. In light of our conclusion that the Merged Entity would not have the incentive to pursue a foreclosure strategy, we have not considered its effects on competition.

#### 5.2.2.3 *Conclusion on Theory of Harm 2*

59. For the reasons set out above, the CMA believes that the Parties would have limited ability and no incentive to engage in the foreclosure of rival IDNOs by the Merged Entity's respective DNOs. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of input foreclosure.

## **6. ENTRY AND EXPANSION**

60. Because the Merger will not result in an SLC under any theory of harm considered, the CMA has not carried out a separate assessment of whether entry or expansion could function as a countervailing factor against a potential SLC.

## DECISION

61. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
62. The Transaction will therefore not be referred under section 22(1) of the Act.

**Jenny Sugiarto**  
**Director, Mergers**  
**Competition and Markets Authority**  
**20 March 2025**

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### ENDNOTES

<sup>i</sup> This figure has been corrected for publication. The decision as issued incorrectly had a figure of £6 billion and stated that this turnover was in 2024.

<sup>ii</sup> This sentence should be read 'For Iberdrola (via its interest in ScottishPower group), its licence area includes Central & Southern Scotland, Merseyside, North Wales, Cheshire and North Shropshire (Iberdrola's Region).'