



EUROPEAN COMMISSION
DG Competition

Case M.10212 - ANDEL / ENERGI DANMARK

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 29/10/2021

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EUROPEAN COMMISSION

Brussels, 29.10.2021
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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Andel a.m.b.a
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Danmark

Subject: Case M.10212 – ANDEL / ENERGI DANMARK
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 24 September 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Andel a.m.b.a (“Andel”, Denmark) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Energi Danmark A/S (“Energi Danmark”, Denmark) by way of purchase of shares (the “Transaction”)³. Andel is designated as the “Notifying Party” and together with Energi Danmark as the “Parties”.

¹ OJ L 24, 29.1.2004, p. 1 (the ‘Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (‘TFEU’) has introduced certain changes, such as the replacement of ‘Community’ by ‘Union’ and ‘common market’ by ‘internal market’. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p. 3 (the ‘EEA Agreement’).

³ Publication in the Official Journal of the European Union No C 402, 5.10.2021, p. 11.

1. THE PARTIES

- (2) Andel is a Danish cooperatively owned energy and fibre group, which is active within energy production, energy distribution, fibre infrastructure, and energy sales and solutions. Andel is primarily active in Denmark, but also trades on e.g. the gas exchanges in Germany and the Netherlands and sells natural gas and biogas in Southwest Sweden.
- (3) Energi Danmark is a Danish energy trading group with activities within physical and financial trading of electricity, certificates trading, trading of natural gas, oil, carbon, and wind energy, and portfolio management based on the Nordic and German energy markets. Energi Danmark has trading activities in 26 countries.

2. THE OPERATION AND THE CONCENTRATION

- (4) The concentration consists of the acquisition of sole control by Andel over Energi Danmark through the acquisition of shares. Andel currently owns a 40.9% minority shareholding in Energi Danmark, but does not have sole or joint control, either *de iure* or *de facto*.⁴ Through the Transaction, Andel will increase this shareholding to approximately 63.65%. Andel is to acquire this increased shareholding both directly and also indirectly, through its 100% owned subsidiary SEAS-NVE Strømmen. The remaining 36.35% shareholding in Energi Danmark will be held by NRGi a.m.b.a. ("NRGi", Denmark), which will as a result of the Transaction increase its shareholding from 23.12% to 36.35%.⁵
- (5) Andel will exercise sole control over Energi Danmark because it will hold a majority of seats of the Board of Directors.⁶ [...].⁷ Andel will also have a majority of votes at the shareholders' meeting and NRGi will not have any veto rights over strategic decisions.
- (6) In light of the above, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁸ [Andel: EUR [...], Energi Danmark: EUR [...]]. Each of them has a Union-wide turnover in excess of EUR 250 million, but they do

⁴ The remaining shareholdings are currently held by NRGi a.m.b.a. ("NRGi") (23.12%), Energi Nord Holding A/S (18.37%), EWII Energi A/S (16.5%), SEF Energi A/S (1.12%), Fonden Langelands Elforsyning (0.4%).

⁵ As a result of the Transaction, Energi Nord Holding A/S, EWII Energi A/S, SEF Energi A/S, Fonden Langelands Elforsyning, will sell their shareholdings to Andel and NRGi, thereby exiting as shareholders of Energi Danmark.

⁶ The Board of Directors of Energi Danmark is responsible for the adoption of key strategic decisions such as the adoption of the budget and business plan. The shareholders' meeting does not give any shareholder veto rights, but rather is responsible for the election of the board of directors, adopts amendments to the articles of association, decides on dividend payments.

⁷ Form CO, paragraph 30

⁸ Turnover calculated in accordance with Article 5 of the Merger Regulation.

not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. MARKET DEFINITION RELEVANT FOR HORIZONTAL ANALYSIS

- (8) The Parties are both active on the market for the retail sale of electricity in Denmark. However, Energi Danmark does not provide electricity to households/private consumers or smaller industrial consumers with annual consumption less than 0.1 GWh. The main horizontal overlap between the Parties is therefore in the retail sale of electricity to large industrial customers with annual consumption above 0.1 GWh in Denmark and this is the focus of our market investigation. There is also a minimal horizontal overlap in the retail sale of natural gas to large industrial consumers.
- (9) Moreover, there are several upstream markets that are vertically affected in view of the fact that the Parties' combined market share in the downstream electricity retail market is above 30%, in particular, generation and wholesale supply (where both Parties are present), and balancing and ancillary services, distribution of electricity, certificates trading and financial trading (where Energi Danmark is active). Moreover, Anel is active with a market share higher than 30% in the e-mobility services market, which is downstream from generation and wholesale supply.
- (10) Finally, there are horizontal overlaps in the supply of natural gas and gas storage, but these are not affected markets and will therefore not be discussed further in this decision.

4.1. Retail supply of electricity to large industrial customers

4.1.1. Product market

- (11) In its previous decisions, the Commission has considered that there exists a distinct product market for retail supply of electricity to large industrial and commercial customers on the one hand and households and smaller industrial and commercial customers on the other hand.⁹

4.1.1.1. The Notifying Party's view

- (12) The Notifying Party argues that the relevant consumption threshold to identify "large industrial customers" is the consumption level above 0.1 GWh, based on relevant precedents of the Danish competition authority.¹⁰ This 0.1 GWh had previously been identified as the relevant threshold because it distinguished between the metered, and non-metered customers. Now that all Danish consumers typically have metered billing, this distinction is less relevant. However, the Parties note that 0.1 GWh is nonetheless a useful dividing line between (i) smaller industrial customers/households and (ii) larger industrial customers. The Parties note that larger industrial customers tend to be more professional buyers, have a higher degree of price sensitivity, have a higher degree of buyer power, shorter contract lengths, often choose their supplier by broker or tender, tend to have specialised needs such

⁹ Case M.8660, FORTUM/UNIPER, para 102, M.9587, Engie/EDP Renovaveis/EDPR Offshore Espana paras 23-24, M.8855 Otary/Eneco/Electrabel/JV paras 27-28.

¹⁰ Form CO, paragraph 171.

as security of supply, demand for advisory services and hedging agreements, and some require delivery in more than one country.¹¹

- (13) The Notifying Party does not consider that there are distinct markets for retail supply of electricity according to the type of generation e.g. “green” or renewable energy. They argue that electricity is a homogenous product; once it has been generated, it is fed into the grid and it is impossible to distinguish. From a demand side perspective, the two are entirely substitutable. While some customers may value “green” electricity, the Parties submit that only a few customers are willing to pay a premium for green energy.¹²

4.1.1.2. The Commission’s assessment

- (14) In the market investigation, the majority of customers and competitors agreed that there should be distinct markets for at least: (i) large industrial customers above 0.1 GWh; (ii) small industrial customers below 0.1 GWh; and (iii) household customers. However, certain market respondents highlighted that the 0.1 GWh threshold for indicating the division between “small” and “large” industrial customers, was too low. For example, one customer noted that: *“0,1 GWh is very low number for industries, if I take an average on over 100 of our sites the value will be 3,5GWh/year. Then looking into how Energy Efficiency Directive is interpreted in some member states for large enterprises (large industries) I would say the above 5 or 10GWh is a large industry.”*¹³ Similarly, a competitor added that from its perspective, the relevant dividing line between small and large industrial customers was a yearly consumption of electricity below/above 2 GWh.¹⁴ The same competitor considered that *“very large”* customers were those with a consumption above 20 GWh.
- (15) The market investigation therefore indicated that there could be additional separate product markets regarding large industrial customers, according to the size of yearly electricity consumption. The vast majority of competitors noted that the retail supply of electricity to large industrial should be further segmented according to: (i) customers with annual consumption between 0.1 and 2 GWh; (ii) customers with annual consumption between 2 and 10 GWh; and (iii) customers with annual consumption above 10 GWh in view of their different consumption patterns. One competitor explained that while customers with consumption of between 0.1 and 2 GWh still tended to *“act as a small business”*, customers in the 2 – 10 GWh bracket were *“more aware of the dynamics in the market”*, while those with a consumption above 10 GWh were *“highly professional customers, often with specialized employees or advisers involves in the purchasing process. Customers often involve several suppliers for tender process.”*¹⁵ Another competitor noted that customers sourcing above 10 GWh electricity per year had *“more advanced sourcing strategies and a higher level of contractual and consumption awareness”*.¹⁶

¹¹ Form CO, paragraph 175.

¹² Form CO, paragraph 185.

¹³ See reply to question 3 of questionnaire to customers.

¹⁴ See reply to question 3 of questionnaire to competitors.

¹⁵ See reply to question 4 of questionnaire to competitors.

¹⁶ See reply to question 4 of questionnaire to competitors.

- (16) The market investigation also provided indications that there could also be a separate market for electricity produced from renewable sources (“green” electricity), with a majority of both customers and competitors expressing this view.¹⁷ However, certain market participants considered that this should only be the case for “green” electricity that is supplied through corporate power purchase agreements (“PPAs”).¹⁸ Indeed, a majority of customers and competitors who replied to the market investigation noted that it was appropriate to distinguish a separate market for the supply of “green” electricity through PPAs with the owner of renewable generation assets.¹⁹ For example, one competitor noted: *“We do not find it appropriate to separate a market for green electricity as a “whole”, but we find it appropriate to consider PPA's as a separate market. We experience that we have industrial customers who contact us directly in order to buy PPA products (not green energy, but PPA).”*²⁰
- (17) A majority of competitors noted that the costs to start supplying “green” electricity were low, although the costs for supplying “green” electricity through PPAs were deemed to be higher.²¹ For example, one competitor noted that: *“Offering “green” electricity from GoO's [Guarantees of Origins, “GoOs”] is an affordable setup - both in the start up, risks and in the normal operation. The importance of long-term deals with the customer is limited. Offering “green” electricity through PPA's is a much larger setup involving several partners, investors and customers and presume long-term relations. The supplier need “big muscles to enter into a PPA setup for the supply of “green” electricity to large industrial customers through PPAs.”*²²
- (18) Finally, a majority of both customers and competitors considered that large industrial customers would be ready to pay a higher price for “green” electricity.²³ For example, one large industrial customer noted that: *“We would be ready to pay a premium, as sustainability is high agenda and brings a lot of value to the company. The premium would from our point of view depend on multiple factors: PPA or GoO's, type of GoO's etc.”*²⁴
- (19) The Commission notes in fact that any supplier of electricity can supply as well “green” electricity by just buying the equivalent amount of GoOs, which would point to the existence of full supply-side substitutability. This would not be the case for the supply of green electricity via PPAs, as the supplier would need either to own a production asset or to have an agreement with the owner.²⁵
- (20) However, for the purposes of this decision, the exact product market definition can be left open as the proposed Transaction does not raise serious doubts as to its

¹⁷ See replies to question 5 of questionnaire to customers, see replies to question 5 of questionnaire to competitors.

¹⁸ See replies to question 5 of questionnaire to competitors.

¹⁹ See replies to question 6 of questionnaire to customers, see replies to question 7 of questionnaire to competitors.

²⁰ See reply to question 5 of questionnaire to competitors.

²¹ See replies to questions 6 and 8 of questionnaire to competitors.

²² See reply to question 6 of questionnaire to competitors.

²³ See replies to question 7 of questionnaire to customers, see replies to question 9 of questionnaire to competitors.

²⁴ See reply to question 7 of questionnaire to customers.

²⁵ See replies to questions 6-8 of questionnaire to competitors.

compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition. The Commission will therefore analyse the effects of the proposed Transaction on the basis of separate product markets for: (i) the retail supply of electricity to all large industrial customers (ie. those with an annual consumption above 0.1 GWh); (ii) the retail supply of electricity to large industrial customers with annual consumption levels between 0.1 GWh and 2 GWh; (iii) the retail supply of electricity to large industrial customers with annual consumption levels between 2 GWh and 10 GWh; (iv) the retail supply of electricity to large industrial customers with annual consumption levels above 10 GWh and; (v) the retail supply of “green” electricity to large industrial customers through PPAs.

4.1.2. *Geographic market*

- (21) In its previous decisions, the Commission has defined retail electricity markets as national in scope²⁶ but has also considered whether the market may be narrower than national.²⁷ However, as regards the Nordics, it has also considered that there may be a wider, regional market for the retail supply of electricity.²⁸

4.1.2.1. The Notifying Party’s view

- (22) The Parties argue that the market is broader than national²⁹ and should encompass at least the Nord Pool area, an electricity exchange operating across the Nordics, Baltics and other central and Northern European countries. They note that Energi Danmark is active across the Nordics i.e. Sweden, Norway and Finland, which are all part of Nord Pool. A number of foreign suppliers are also active in Denmark, such as Norsk Elkraft (Norway) and Vattenfall (Sweden). The Parties note that the costs of access to Nord Pool are the same for all and that Danish wholesale electricity prices were the same as the other Nord Pool countries for around 50% of the year.

4.1.2.2. The Commission’s assessment

- (23) All of the competitors replying to the Commission’s market investigation confirmed that they were active in supplying electricity to large industrial customers in Denmark only, as opposed to two or more Nordic countries.³⁰ A majority of competitors also indicated that the majority of Danish suppliers retailing electricity to large industrial customers were not active in other Nord Pool countries.³¹ A majority of customers replying to the Commission’s market investigation also indicated that their suppliers were also active throughout Denmark, as opposed to two or more Nordic countries.³² A minority of customers indicated that their suppliers were active across two or more Nordic countries. One such customer

²⁶ Case M.8660, FORTUM/UNIPER, paras 105-106, M.9587 Engie/EDP Renovaveis/EDPR Offshore Espana paras 27-28, M.8855 Otary/Eneco/Electrabel/JV paras 30-31.

²⁷ M.9587 Engie/EDP Renovaveis/EDPR Offshore Espana para 27.

²⁸ Case M.8660, FORTUM/UNIPER, paras 105-106.

²⁹ Form CO, paragraph 190 and 195.

³⁰ See replies to question 10 of questionnaire to competitors.

³¹ See replies to question 12 of questionnaire to competitors.

³² See replies to question 8 of questionnaire to customers.

provided the examples of Vattenfall and Energi Danmark who were active in supplying their Danish and Swedish sites.³³

- (24) Overall, a significant majority of both customers and competitors considered that in light of the similarities in the suppliers of the market and in pricing, that the market for the retail supply of electricity to large industrial customers was national in scope.
- (25) The Commission considers that the geographic scope of the market is most likely national. However, for the purposes of this decision, the exact geographic market definition can be left open as to whether it is national or wider than national e.g. extending to other Nordic countries, as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

4.2. Retail sale of natural gas to large industrial customers

- (26) The Commission has consistently found a separate relevant product market for the retail sale of gas. In the most recent decisions, the Commission considered a further segmentation into (i) the supply of gas to gas-fired power plants, (ii) the supply of gas to large industrial customers, (iii) the supply of gas to small industrial and commercial customers, and (iv) the supply of gas to household customers with reference to various past cases, where various delineations between the segments were considered.³⁴
- (27) Regarding the geographical scope of the market, the Commission has generally held that the geographic markets for gas supply were national in scope, whilst also considering a regional scope in a few older cases.³⁵
- (28) The Notifying Party argues that for the purposes of the Transaction, the market definition can be left open. The Commission agrees that for the purposes of this decision, the exact market definition can be left open as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

5. MARKET DEFINITION RELEVANT FOR VERTICAL ANALYSIS

5.1. Generation and wholesale supply of electricity

- (29) The Commission has consistently found a relevant market for the generation and wholesale supply of electricity, which comprises electricity generated in power stations, traded on the wholesale market (through bilateral agreements, regulated market places, and power exchanges) as well as electricity physically imported via interconnectors.³⁶

³³ See replies to question 8 of questionnaire to customers.

³⁴ Case M.6984, EPH/Stredoslovenska Energetika, para 27.

³⁵ Case M.6984, EPH/Stredoslovenska Energetika, para 27.

³⁶ Case M.7927, EPH/ENEL/SE, paras 9-12. Case M.8660, FORTUM/UNIPER, para 21.

- (30) The Commission has found that the geographic market is not narrower than national and considered, with regard to the Nordic countries, whether the relevant geographic market is wider than national. The exact delineation was left open.³⁷
- (31) The Commission considers that for the purposes of this decision, the exact market definition can be left open as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

5.2. Financial trading of electricity

- (32) The Commission has found that the financial trading of electricity constitutes a relevant product market, separate from the generation and wholesale supply of electricity.³⁸
- (33) The Commission has considered the market for financial trading of electricity to be global or at least EEA-wide, and in relation to the Nord Pool area, comprising at least the Nord Pool region.³⁹
- (34) The Commission considers that for the purposes of this decision, the exact market definition can be left open as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

5.3. Distribution of electricity

- (35) In previous cases, the Commission has identified two separate markets for the transportation of electricity: transmission and distribution. In relation to distribution networks, the Commission has found the operation and management of lower voltage (distribution) networks to be a relevant product market. The Commission has previously considered the relevant geographic market for the operation of electricity distribution networks to be limited to the geographic area of the network in question (grid wide scope), with each grid constituting a relevant geographic market.⁴⁰
- (36) The Commission considers that for the purposes of this decision, the exact market definition can be left open as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

5.4. Certificates trading

- (37) The Commission has previously found that a separate relevant market exists for the trading of CO₂ allowances, which possibly also includes Certified Emission Reductions (CER credits). In addition, the Commission has found that trading of GoOs form a distinct market.⁴¹

³⁷ Case M.7927, EPH/ENEL/SE, para 34.

³⁸ Case M.8660, FORTUM/UNIPER, paras 37-48.

³⁹ Case M.8660, FORTUM/UNIPER, paras 49-52.

⁴⁰ Case M.8870 E.ON/Innogy, paras 41-43, 46

⁴¹ Case M.8660, FORTUM/UNIPER, paras 107-115.

- (38) Regarding the geographical scope of the markets, the Commission has considered that it comprises the geographical area covered by the relevant regulation.⁴²
- (39) The Commission considers that for the purposes of this decision, the exact market definition can be left open as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

5.5. Balancing power/ancillary services

- (40) The Commission has previously taken the view that a separate product market exists for balancing power and ancillary services. Also, the Commission has considered a further segmentation based on the type of regulation of the balancing service, however the segmentation has been left open.⁴³
- (41) The Commission has previously considered the market to be at most national but potentially limited to the relevant Transmission System Operator's ("TSO") control area (which is national in Denmark) or regional.⁴⁴
- (42) The Commission considers that for the purposes of this decision, the exact market definition can be left open as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

5.6. E-mobility services

- (43) In its early decisions considering e-mobility services, the Commission had considered (i) a broad market for the provision of e-mobility solutions and (ii) a market for the manufacturing, supply and installation of charging infrastructure for e-mobility solutions.⁴⁵ In a more recent decision, the Commission considered whether the market for installation and operation of public electric vehicle ("EV") charging stations may be further segmented. In that case, the Commission considered that the installation and operation of public EV charging stations on-motorways and off-motorways should be considered as separate product markets.⁴⁶ As regards the geographic market definition, the Commission left open whether the relevant geographic market definition was local or national with local elements of competition.⁴⁷
- (44) The Commission considers that for the purposes of this decision, the exact market definition can be left open as the proposed Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any plausible market definition.

⁴² Case M.8660, FORTUM/UNIPER, paras 116-121.

⁴³ Case M.8660, FORTUM/UNIPER, paras 69-78, Case M.7927, EPH/ENEL/SE, paras 24-27.

⁴⁴ Case M.7927, EPH/ENEL/SE, para 37.

⁴⁵ See M.6441, Verbund/Siemens/E-mobility Provider Austria.

⁴⁶ Case M.8870 E.ON/Innogy, para 190.

⁴⁷ Case M.8870 E.ON/Innogy, para 200.

6. COMPETITIVE ASSESSMENT

6.1. Introduction

- (45) The Transaction gives rise to horizontally affected markets in the (i) retail supply of electricity to large industrial customers in Denmark, and in the (ii) retail supply of gas to large industrial customers in Denmark.
- (46) Moreover, the given the vertical links between the Parties, the Transaction gives rise to the following vertically affected markets:
- i. electricity generation and wholesale supply market, where both Andel and Energi Danmark are active (upstream), and retail supply of electricity to large industrial customers, where both Parties are also present (downstream);
 - ii. electricity generation and wholesale supply market (upstream), and the e-mobility services market, where Andel is present (downstream);
 - iii. balancing power and ancillary services market, where Energi Danmark is active (upstream), and retail supply of electricity to large industrial customers (downstream);
 - iv. distribution of electricity, where Andel is active (upstream), and retail supply of electricity to large industrial customers (downstream);
 - v. certificates trading, where Energi Danmark is present (upstream), and retail supply of electricity to large industrial customers (downstream); and
 - vi. financial trading of electricity, where Energi Danmark is present (upstream), and retail supply of electricity to large industrial customers (downstream).

6.2. Horizontal non-coordinated effects

- (47) The Transaction gives rise to affected markets in the retail supply of (i) electricity and (ii) gas to large industrial customers in Denmark.

6.2.1. Retail supply of electricity to large industrial customers in Denmark

6.2.1.1. The Notifying Party's views

- (48) The Notifying Party submits that the Transaction raises no competition concerns in relation to the market for the retail supply of electricity to large industrial customers in Denmark because (a) competitors exert significant competitive pressure, (b) entry barriers are low and suppliers have and will enter the market, (c) customers' switching costs are low, (d) customer mobility is increasing, (e) there are no capacity constraints concerning electricity purchases, and (f) there is buyer power among large industrial customers.⁴⁸

⁴⁸ Form CO, paragraphs 260 onwards.

6.2.1.2. The Commission's assessment

(A) Market shares

(49) The tables below show the Parties' and their main competitors' market shares, in terms of volume of electricity sold (GWh) and points of delivery (PoDs)⁴⁹ for the last three years in (i) the retail supply of electricity to all large industrial customers, i.e. those customers with annual consumption levels above 0.1 GWh, (ii) the retail supply of electricity to large industrial customers with annual consumption levels between 0.1 GWh and 2 GWh, (iii) the retail supply of electricity to large industrial customers with annual consumption levels between 2 GWh and 10 GWh, and (iv) the retail supply of electricity to large industrial customers with annual consumption levels above 10 GWh.^{50 51}

(A.i) Retail supply of electricity to all large industrial customers, i.e. those customers with annual consumption levels above 0.1 GWh

(50) Table 1 and Table 2 show the Parties' and their main competitors' shares in the retail supply of electricity to *all* large industrial customers (i.e. all customers with an annual consumption above 0.1 GWh) in the last three years, based on volumes sold (GWh) and on points of delivery (PoDs).

Table 1: Sales to customers with annual consumption levels >0.1 GWh in volume

	Volume (GWh)			Market shares		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[5-10]%	[10-20]%
E Danmark	[...]	[...]	[...]	[30-40]%	[30-40]%	[20-30]%
Combined	[...]	[...]	[...]	[30-40]%	[30-40]%	[30-40]%
Orsted	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Norlys	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
NRGi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
EnergiFyn	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
EWII	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Scanenergi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Norsk Elkraft	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Aura	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
SEF	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Others	[...]	[...]	[...]	[20-30]%	[20-30]%	[10-20]%
TOTAL	[...]	[...]	[...]	100%	100%	100%

⁴⁹ PoD is the physical point for electricity (or gas) delivery at which the customer's premises are connected to the grid. Market shares in terms of volumes sold and PoDs may therefore differ since the volume of electricity (or gas) contracted by each customer may be different and so will the volume of electricity (or gas) delivered at each PoD.

⁵⁰ Because customers may have multiple PoDs, sales and market shares estimates include, within each category (i.e. above, 0.1 GWh, between 0.1 and 2 GWh, etc.) those customers whose *overall annual consumption levels* are above/below the relevant consumption level (customer relations), even if some or all of their individual PoDs does not fall within the threshold in question (e.g. because the annual consumption of those individual PoDs is below 0.1 GWh).

⁵¹ Energi Danmark also has a marginal presence in the retail supply of electricity to *small* industrial customers with a total sales of [...] in 2020, amounting to [0-5]% of the total sales to small industrial customers in Denmark (see Form CO paragraphs 105 and following). Given these minimal sales, this market will not be addressed in the present decision.

Source: Form CO, Table 10.

Table 2: PoDs at customers with annual consumption levels >0.1 GWh

	# PoDs			%		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
Energi Danmark	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
<i>Combined</i>	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Ørsted	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Norlys	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
NRGi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Energifyn	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
EWII	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Scanenergi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Norsk Elkraft	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Aura	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
SEF	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Others	[...]	[...]	[...]	[50-60]%	[50-60]%	[50-60]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, Table 11.

- (51) The Transaction would therefore imply the combination of the first and fourth market players in terms of volume.
- (52) In terms of volumes sold, the Parties' combined share has always remained below [40-50]% in the last three years, with Andel's market presence increasing whereas Energi Danmark's has slightly decreased. Post-Transaction, there would still be two players with market shares higher than the share increment brought about by the Transaction. In terms of PoDs, however, the situation is very different, as the Parties' combined share post-Transaction would only be [10-20]%, with three players with shares higher than or around the market share increment. And although the Parties' combined PoDs have increased over the last three years, their growth rate has been lower than the overall growth of the market, which has resulted in a combined share decreasing from [10-20]% in 2018 to [10-20]% in 2020. The market appears to be very fragmented, with up to 11 competitors with [0-5]% share and a large group of even smaller competitors, which together make up more than 50% of the market ([50-60]).
- (53) However, the Notifying Party submits that a [...] proportion of its market share is due to sales to distribution group companies – Radius and Cerius – to cover grid losses. When these sales are excluded the Parties' shares would be as follows:

Table 3: Sales to customers with annual consumption levels >0.1 GWh in volume, excluding Andel's sales to its group's distribution companies

	GWh			%		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
Energi Danmark	[...]	[...]	[...]	[30-40]%	[30-40]%	[20-30]%
<i>Combined</i>	[...]	[...]	[...]	[30-40]%	[30-40]%	[30-40]%
Others	[...]	[...]	[...]	[60-70]%	[60-70]%	[60-70]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, Table 10.a

Table 4: PoDs at customers with annual consumption levels >0.1 GWh, excluding Andel's sales to its group DSOs

	GWh			%		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
Energi Danmark	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
<i>Combined</i>	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Others	[...]	[...]	[...]	[80-90]%	[80-90]%	[80-90]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, Table 11.a

- (54) Once Andel's sales to its own DSO's are excluded, Andel's share in terms of volume is reduced by [0-5] percentage points, and thus the Parties' combined share post-Transaction in 2020 would be [30-40]%. By contrast, market shares in terms of PoDs remain essentially unaltered.⁵²

(A.ii) Retail supply of electricity to large industrial customers with annual consumption levels between 0.1 GWh and 2 GWh

- (55) Table 5 and Table 6 show the Parties' and their main competitors' shares in the retail supply of electricity to large industrial customers with annual consumption levels between 0.1 GWh and 2 GWh in the last three years, based on volumes sold (GWh) and on points of delivery (PoDs).

Table 5: Sales to customers with annual consumption levels 0.1 – 2 GWh in volume

	Volume (GWh)			Market shares		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
E Danmark	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
<i>Combined</i>	[...]	[...]	[...]	[20-30]%	[20-30]%	[20-30]%
Ørsted	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Norlys	[...]	[...]	[...]	[20-30]%	[20-30]%	[20-30]%
NRGi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Energifyn	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
EWII	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Scanenergi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%

⁵² The Commission considers these sales to be intragroup and therefore in principle not exposed to competition in the market.

	Volume (GWh)			Market shares		
	2018	2019	2020	2018	2019	2020
Norsk Elkraft	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Aura	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
SEF	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Others	[...]	[...]	[...]	[20-30]%	[20-30]%	[10-20]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, table 14

Table 6: PoDs at customers with annual consumption levels 0.1 – 2 GWh

	# PoDs			%		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
Energi Danmark	[...]	[...]	[...]	[5-10]%	[5-10]%	[0-5]%
<i>Combined</i>	[...]	[...]	[...]	[10-20]%	[10-20]%	[5-10]%
Ørsted	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Norlys	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
NRGi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Energifyn	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
EWII	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Scanenergi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Norsk Elkraft	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Aura	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
SEF	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Others	[...]	[...]	[...]	[50-60]%	[50-60]%	[50-60]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, table 15

- (56) The Transaction would entail the combination of the third and the fourth market players in terms of volume, and the fourth and the fifth in terms of PoDs. The combined share would be relatively low in both cases (in the case of PoDs even below 10%). Post-Transaction, there would still be one player with higher shares than the combined entity (two in the case of shares in terms of PoDs) and one more player (two in the case of shares in terms of PoDs) with shares higher than the share increment brought about by the Transaction. Overall, the Parties have increased their share in sales in the last three years but have slightly decreased their presence in the market if this is measured in terms of PoDs.

(A.iii) Retail supply of electricity to large industrial customers with annual consumption levels between 2 GWh and 10 GWh

- (57) Table 7 and Table 8 show the Parties' and their main competitors' shares in the retail supply of electricity to large industrial customers with annual consumption levels between 2 GWh and 10 GWh in the last three years, based on volumes sold (GWh) and on points of delivery (PoDs).

Table 7: Sales to customers with annual consumption levels 2 - 10 GWh in volume

	GWh			%		
	2018	2019	2020	2018	2019	2020
Andel	389	500	568	[5-10]%	[10-20]%	[10-20]%
Energi Danmark	[...]	[...]	[...]	[20-30]%	[20-30]%	[20-30]%
<i>Combined</i>	[...]	[...]	[...]	[30-40]%	[30-40]%	[30-40]%
Ørsted	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Norlys	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
NRGi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Energifyn	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
EWII	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Scanenergi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Norsk Elkraft	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Aura	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
SEF	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Others	[...]	[...]	[...]	[20-30]%	[20-30]%	[10-20]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, Table 16

Table 8: PoDs at customers with annual consumption levels 2 - 10 GWh

	# PoDs			%		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
Energi Danmark	[...]	[...]	[...]	[10-20]%	[10-20]%	[5-10]%
<i>Combined</i>	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Ørsted	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Norlys (Eniig + Syd Energi)	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
NRGi/Natur-Energi/Gul Strøm	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Energifyn	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
EWII	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Scanenergi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Norsk Elkraft	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Aura	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
SEF	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Others	[...]	[...]	[...]	50-60%	50-60%	50-60%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, Table 17

- (58) The Transaction implies the combination of the first and the fourth market players in terms of volume, and the second and the fourth in terms of PoDs. The combined share would be below 40% in terms of volume and only [10-20]% in terms of PoDs. Post-Transaction, there would still be two players with shares higher than the share increment brought about by the Transaction and, in total, there would still remain up to ten competitors with shares of 1% or more and a group of smaller players with a combined share of 19% (53% in shares in terms of PoDs). Overall, the Parties have slightly increased their combined share in sales in the last three years, although

Energi Danmark has lost [0-5] percentage points. In PoDs, shares have remained relatively stable.

(A.iv) Retail supply of electricity to large industrial customers with annual consumption levels above 10 GWh

- (59) Table 9 and Table 10 show the Parties' and their main competitors' shares in the retail supply of electricity to large industrial customers with annual consumption levels above 10 GWh in the last three years, based on volumes sold (GWh) and on points of delivery (PoDs).

Table 9: Sales to customers with annual consumption levels above 10 GWh in volume

	GWh			%		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[5-10]%	[10-20]%
Energi Danmark	[...]	[...]	[...]	[40-50]%	[40-50]%	[30-40]%
<i>Combined</i>	[...]	[...]	[...]	[40-50]%	[40-50]%	[40-50]%
Ørsted	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Norlys	[...]	[...]	[...]	[0-5]%	[0-5]%	[5-10]%
NRGi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Energifyn	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
EWII	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Scanenergi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Norsk Elkraft	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Aura	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
SEF	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Others	[...]	[...]	[...]	[20-30]%	[20-30]%	[10-20]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, Table 18

Table 10: PoDs at customers with annual consumption level above 10 GWh

	# PoDs			%		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[5-10]%	[0-5]
Energi Danmark	[...]	[...]	[...]	[20-30]%	[20-30]%	[20-30]%
<i>Combined</i>	[...]	[...]	[...]	[20-30]%	[20-30]%	[20-30]%
Ørsted	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
Norlys	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
NRGi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Energifyn	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
EWII	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Scanenergi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Norsk Elkraft	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Aura	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
SEF	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Others	[...]	[...]	[...]	[50-60]%	[50-60]%	[50-60]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, Table 19

- (60) A [...] amount ([...]) of the sales of Anadel to this category of customers are made to distribution group companies – Radius and Cerius – for grid losses. When these are excluded, the Parties’ shares would be as follows:

Table 11: Sales to customers with annual consumption levels above 10 GWh in volume, excluding Anadel’s sales to its group DSOs

	GWh			%		
	2018	2019	2020	2018	2019	2020
Anadel	[...]	[...]	[...]	[0-5]%	[5-10]%	[5-10]%
Energi Danmark	[...]	[...]	[...]	[40-50]%	[40-50]%	[30-40]%
<i>Combined</i>	[...]	[...]	[...]	[40-50]%	[40-50]%	[40-50]%
Others	[...]	[...]	[...]	[50-60]%	[50-60]%	[50-60]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, Table 18.a

Table 12: PoDs at customers with annual consumption levels above 10 GWh, excluding Anadel’s sales to its group DSOs

	# PoDs			%		
	2018	2019	2020	2018	2019	2020
Anadel	[...]	[...]	[...]	[5-10]%	[5-10]%	[0-5]%
Energi Danmark	[...]	[...]	[...]	[20-30]%	[20-30]%	[20-30]%
<i>Combined</i>	[...]	[...]	[...]	[20-30]%	[20-30]%	[20-30]%
Others	[...]	[...]	[...]	[70-80]%	[70-80]%	[70-80]%
Total market	[...]	[...]	[...]	100%	100%	100%

Source: Form CO, Table 19.a

- (61) The Transaction implies the combination of the first and the third market players in terms of volume, and the first and the fourth in terms of PoDs. However, after its sales to other group companies are excluded, Anadel appears to be a minor player with respect to this category of customers, with only a [5-10]% share in terms of volume and [0-5]% in terms of PoDs, and the Parties’ combined share post-Transaction would be [40-50]% in terms of sales and [20-30]% in terms of PoDs. Energi Danmark appears to have lost a significant volume of sales (from [40-50]% share in 2018 to [30-40]% in 2020) in the last three years, which translates in a decrease in the Parties’ combined share of [0-5] percentage points (from [40-50]% to [40-50]%), despite Anadel’s slight increase. Noticeably, this market share loss has taken place in a period in which the total sales in the market to this category of customers has increased considerably (from 7 777 GWh in 2018 to 11 463 GWh in 2020, i.e. a 17% growth), which means that the Parties’ competitors have managed to capture more than the total growth of the market. Post-Transaction, there would still be up to nine competitors with shares of 1% or more and a group of smaller players with a combined share of approximately 19% (53% in shares in terms of PoDs).

(A.v) Conclusion on market shares

- (62) In conclusion the Transaction implies the first and fourth players in the supply of electricity to large industrial customers. The Parties’ combined share post-Transaction would remain at [30-40]% in terms of volumes and [10-20]% in terms of PoDs, and there would remain numerous competitors in the market. If a distinction were to be made by category of customers, the Parties appear to have a limited presence among the smaller customers both in terms of volumes (combined

share of [20-30]%) and PoDs ([5-10]%), whereas their shares among the medium customers would be roughly in line with those for the overall market ([30-40]% in terms of volume, [10-20]% in PoDs). However for the larger customers, i.e. those with annual consumption levels of more than 10GWh, which represent [50-60]% of the overall market, although the combined share would be higher ([40-50]% in terms of volume, [20-30]% in PoDs), Andel's presence is minor ([5-10]% in sales, [0-5]% in PoDs), Energi Danmark appears to have lost a significant amount of sales in the last three years, and the Parties' competitors seem to have captured all the growth of the market in the same period.

(B) *The Parties are not close competitors*

- (63) The information provided by the Parties and obtained by the Commission during the market investigation suggests that the Parties are not close competitors.
- (64) First, the Parties focus their businesses on different categories of customers. Whereas the core of Energi Danmark's business seems to be mostly on large and in particular on those with consumption levels above 10 GW/h, Andel's activity with regards to those customers appears to be very limited. As can be seen in Table 1 and Table 2, the difference between market shares by volume and by PoD is considerably larger for Energi Danmark than for Andel. This suggests that customers supplied by Energi Danmark are, on average, significantly larger than those supplied by Andel. Second, Energi Danmark's share in the segment of customers with annual consumption levels above 10 GWh is significantly higher than in the other segments ([30-40]% versus [20-30]% and [10-20]%) and its sales to these customers represent almost [...] of its total sales to large industrial customers; by contrast, Andel's presence in that same segment is minor ([5-10]% share) and the sales to these customers represent only [...] of its total sales to large industrial customers.
- (65) The replies to the market investigation support that Parties target mostly different types of customers. One broker said that *"both Parties barely meet in tenders. Energi Danmark and Andel in general still supply different kind of customers, Energi Danmark mainly targets large and more international players while Andel, while now also supplying large customers, mainly focuses in smaller customers"*⁵³ and that *"the prices offered [by Energi Denmark] became too high in relation to those of other suppliers"*. Another broker indicated that *"already before the transaction there was limited competition between both."*⁵⁴ Moreover, a customer indicated that *"Energi Danmark and Andel are not in the same business. While Andel operates the grid and supplies small customers and consumers, Energi Danmark focuses on larger customers."* This customer *"doesn't see Andel as one of its potential suppliers as they couldn't supply for Nordics."*⁵⁵ Moreover, a large competitor indicated that *"Energi Danmark focuses on customers with a consumption above 5 Gw/h and is specifically performant for very large customers with a consumption above 10 GWh. Conversely, most of Andel's sales are to small and middle segment customers."*⁵⁶ Another large competitor said that *"Energi Danmark is focused on large business customers. [...] Conversely, Andel is very*

⁵³ See minutes of a conference call with a broker, 25 August 2021.

⁵⁴ See minutes of a conference call with a broker, 26 August 2021.

⁵⁵ See minutes of a conference call with a customer, 9 June 2021.

⁵⁶ See replies to question 23.1 of questionnaire to competitors.

active in the segment for small and medium customers and only has a few large customers".⁵⁷

- (66) Second, another element pointing to the Parties not being close competitors is the tender data provided by the Parties. Anel and Energi Danmark seem to have competed in very few tenders in the last 2-3 years due to Energi Danmark's decreasing participation in tenders over the last years.⁵⁸ Moreover, among all the customers who replied to the market investigation, four indicated that they considered both Parties as electricity suppliers in the last contract. Seven considered only one of the Parties.⁵⁹
- (67) Third, the replies to the market test suggest that, in general, market players do not perceive the Parties as being close competitors. Only one customer indicated that the Parties are particularly close competitors.⁶⁰ The vast majority of customers and competitors indicated that Norlys and Ørsted are closer competitors of the Parties than the Parties are to each other. For instance, one large competitor said that "*Anel and Energi Danmark does not differ more from each other than other suppliers on the market*".⁶¹
- (68) Fourth, the switching estimates provided by the Parties indicate that out of all the contracts lost by Anel in 2020 only [...] was lost to Energi Danmark, yielding an approximate diversion ratio of [0-5]%, which is considerably lower than the ratio towards other competitors (EWII [50-60]%, Jysk Energi, [10-20]%, Orsted [10-20]%, Scanenergi [5-10]%). In 2018 and 2019, [...]. In 2020, Energi Danmark lost [20-30]% of its contracts to Anel. Although this percentage is not low, it is still considerably less than the proportion of contracts lost to Norlys ([30-40]%), and in any case Energi Danmark underlines that it is not aware of the beneficiary of most of its lost contracts. In any case, Energi Danmark submits that it is not aware that [...].⁶²

(C) *Existence of alternative suppliers*

- (69) There are a number of credible alternative suppliers that will remain in the market, such as Norlys, Ørsted, Vattenfall, Jysk Energi, Danske Commodities, NRGi and EnergiFyn.⁶³ The majority of customers who replied to the market investigation indicated that there would be sufficient alternative suppliers to turn to once their current contracts expire. Only two customers indicated that there would be no sufficient alternatives, one of them submitting that for the last contract it only received "*offers from 5 suppliers*".⁶⁴ For instance, a large customer indicated that

⁵⁷ See minutes of a conference call with a customer, 11 June 2021.

⁵⁸ The reason is that, in Energi Danmark's view, tenders are overly focused on price with little room for other parameters. [...]. With tenders, Energi Danmark cannot just price the customers afterward, as they are not in contact with the customer. This is handled by the consultants, who have agreed with the customer that all communication goes through the consultant. Energi Danmark submits that it is not interested in that. See reply to RFI 4.

⁵⁹ See replies to question 16 of questionnaire to customers.

⁶⁰ See replies to question 20 of questionnaire to customers.

⁶¹ See replies to question 20 of questionnaire to customers and question 23.1 of questionnaire to competitors.

⁶² See reply to RFI 2 and RFI 4.

⁶³ See replies to question 28.1 of questionnaire to customers.

⁶⁴ See replies to question 28 of questionnaire to customers.

“there are still a number of alternative suppliers and so there will continue to be competition”.⁶⁵ During the market investigation, a broker indicated that it currently receives three to five offers in each tender, and that it received eight to ten offers some years ago.⁶⁶ Moreover, all the competitors who replied to the market investigation confirmed that there would be sufficient alternative suppliers for customers to turn to in case the combined entity increased prices or provided their service at significantly worse conditions. A number of alternative suppliers were mentioned by competitors, and one of them indicated that *“[f]or most customers their products are relatively standardized, therefore customers should not have any difficulties finding an alternative supplier.”*⁶⁷

- (70) The tender data provided by the Parties shows that in 2020 Andel and Energi Danmark won [...] % and [...] % of the tenders in which they participated, respectively. This, coupled with the fact that the Parties barely met in tenders in 2020, indicates that a significant proportion of tenders in which the Parties participated were available for other suppliers.
- (71) Electricity being a very homogeneous product, suppliers cannot differentiate themselves easily. In this regard, during the market investigation a broker indicated that there are no *“particular advantages by Andel or Energi Danmark. Simply, being larger companies, they can in general offer more flexibility as regards payment terms. [...] all major suppliers offer more or less the same service.”*⁶⁸ A customer also submitted that *“the margins of electricity suppliers are rather thin and the mark-ups and services offered are therefore very close”*⁶⁹ and another one mentioned that this *“partly explains why there is a strong competitive pressure in the electricity retail market”*.⁷⁰ In fact, the market investigation revealed that the most important factors for large industrial customers to choose electricity supplier are price, payment terms and quality/reliability.⁷¹ This is consistent with competitors’ perception that margins are low. Competitors said that *“[t]he margins from the supplier has decreased. The competition is strong”* and that *“[t]he market is highly liberalized and characterized by a high level of competition. Generally, margins within the segment of larger industrial customers are low.”*⁷² Moreover, during the market investigation a broker indicated that in recent years suppliers have been *“leaving the tenders, arguing that with the tenders it is not possible to sustain any reasonable margin”* and gave a concrete example of an electricity supplier who *“changed strategy and stopped participating in tenders, arguing that the margins are too low”*.⁷³ Another broker mentioned that *“Energi Danmark has been withdrawing from tenders since there is too much competition and, when brokers are involved, margins are too small”*.⁷⁴

⁶⁵ See minutes of a conference call with a customer, 6 July 2021.

⁶⁶ See minutes of a conference call with a broker, 26 August 2021.

⁶⁷ See replies to question 33 of questionnaire to competitors.

⁶⁸ See minutes of a conference call with a broker, 26 August 2021.

⁶⁹ See minutes of a conference call with a customer, 9 June 2021.

⁷⁰ See minutes of a conference call with a customer, 27 May 2021.

⁷¹ See replies to question 13 of questionnaire to customers and question 17 of questionnaire to competitors.

⁷² See replies to question 31.1 of questionnaire to competitors.

⁷³ See minutes of a conference call with a broker, 25 August 2021.

⁷⁴ See minutes of a conference call with a broker, 26 August 2021.

- (72) The tender data provided by the Parties shows that contracts are normally concluded for a duration of one to three years.⁷⁵ The vast majority of respondents to the market investigation confirmed this.⁷⁶ Although the majority of customers have not switched electricity supplier in the last five years,⁷⁷ the vast majority of customers and all the competitors who replied to the market investigation indicated that it is not particularly costly to switch electricity supplier in Denmark and that there are no other barriers that would discourage customers from switching supplier.⁷⁸ For instance, a customer submitted that “*there are no barriers to switch from one electricity supplier to another, once the contract has ended*”.⁷⁹
- (73) Moreover, the Parties’ market shares are not indicative of their market power and may differ significantly depending on the contracts won. For instance, Energi Danmark does not have a large number of customers, [...]. [...].⁸⁰ Moreover, during the market investigation a broker mentioned that Energi Danmark has lost many contracts due to its high prices.

(D) *Absence of barriers to expand*

- (74) Moreover, all the competitors who replied to the market investigation confirmed that they would be able to react in the short term by increasing their purchases of electricity and start selling the customers that want to switch away from the Parties.⁸¹ For instance, a competitor indicated that “*there are no capacity constraints to supply more and larger customers. This only requires to invest in qualified workers and systems. In a nutshell, going from small or large customer is not so much technically difficult but requires a change of strategy.*”⁸²
- (75) Furthermore, there is regulation in place to ensure that distribution of electricity to end-customers is conducted under non-discriminatory terms in the electricity network.⁸³ In these circumstances, it seems that smaller competitors of the Parties do not face significant obstacles to grow.

(E) *Retail supply of “green” electricity to large industrial customers via PPAs*

- (76) The Commission has also analysed the impact of the Transaction in a hypothetical narrower market including only the supply of “green” electricity to large industrial customers through PPAs. Also in this narrower market, the Transaction would not raise serious doubts as to its compatibility with the internal market.

⁷⁵ See reply to question 10 (iv) of RFI 2.

⁷⁶ Half of the customers indicated that the duration of the contracts range from one to two years, whereas 38% said that this was between three to four years. Five competitors replied one to two years and only two competitors indicated three to four years. See replies to question 26 of questionnaire to customers and question 30 of questionnaire to competitors.

⁷⁷ See replies to question 29 of questionnaire to customers.

⁷⁸ See replies to question 30 of questionnaire to customers and question 35 of questionnaire to competitors.

⁷⁹ See minutes of a conference call with a customer, 27 May 2021.

⁸⁰ See reply to RFI 4.

⁸¹ See replies to question 34 of questionnaire to competitors.

⁸² See minutes of a conference call with a customer, 11 June 2021.

⁸³ See, inter alia, Sections 20 and 73 of the Danish Act on Electricity Supply.

- (77) The Notifying Party submits that there seems to be in the market an increasing interest on the side of certain large industrial customers to sign long-term (up to five or even 10 years) PPAs with producers of “green” electricity. Whereas GoOs can be exchanged in the market and can be attached to any electricity supply contract, the PPA is specific in that it is linked to the actual production of a specific generation asset.⁸⁴ By entering into a PPA, customers are ready to assume a general price risk instead of paying the price of the GoOs.⁸⁵ The Parties submit that these contracts are relatively new in the market.⁸⁶ They expect a general decline in the prices of GoOs and that the interest of consumers will gradually shift towards mechanisms such as PPAs which incorporate the “green” element into the price of electricity.⁸⁷
- (78) Suppliers can either sign a PPA asset owner (the producer of “green” electricity) to then resell that electricity to the industrial customer, or as mere intermediary of a direct contractual relationship between the asset owner and the industrial customer.⁸⁸
- (79) The Notifying Party excludes any competition concerns in this segment of the market, since neither Energi Danmark nor Andel are customers or producers (except for Andel’s participation in Rødsand 2, with a very limited production). Moreover, according to the Notifying Party, there are several producers in the market capable of supplying PPA agreements. All existing and new production capacity of renewable energy assets is in theory available for PPAs⁸⁹ and all producers like Ørsted, Vattenfall, Better Energy, or European Energy can offer a PPA to industrial customers.⁹⁰
- (80) Energi Danmark currently only delivers electricity under a PPA agreement with [customer].⁹¹ This constitutes a negligible share of the total production in Denmark in 2020 (29 165 GWh). Energi Danmark does not have information as to the total capacity currently under PPAs and therefore, of what its share of this capacity would be.⁹² In any case, irrespective of the exact market share of Energi Danmark in a

⁸⁴ Form CO, paragraph 185.

⁸⁵ Form CO, paragraph 186. Since at the moment of the signing of the PPA – usually for long periods of 5-10 years– it is uncertain how the electricity price will evolve in the long and very long term.

⁸⁶ Ørsted (former DONG) was, according to the Notifying Party, the first market participant offering PPAs, then labeled ‘climate partnerships’ and for a long time, it was the only market participant offering such products (Form CO, paragraph 523). The novelty of these agreements has been confirmed by a broker [Nordisk Energipartner/Kinect], who has explained that the PPAs have started to emerge in the last years because they is seen as more “green” and local product, conferring direct access to the producer (see minutes of the call of 26 August 2021).

⁸⁷ Form CO, paragraph 187.

⁸⁸ Form CO, paragraph 413.

⁸⁹ Some customers seem to value the “additionality”, i.e. contributing to adding a new green electricity production asset into the market (Form CO, paragraph 520).

⁹⁰ Form CO, paragraphs 340-341.

⁹¹ [In terms of future deliveries, Energi Denmark” [...]. Energi Denmark has also signed a (direct) contract [...]. At the time of the notification Energi Danmark was expecting to sign other agreements with asset owners of approximately [...]. In total, Energi Danmark has currently contracted [...] under PPAs and is about to contract an additional [...] – all for future deliveries (Form CO, paragraphs 527 and 528)].

⁹² However, it has provided examples of three other PPAs entered into by competitors amounting to a total of 227.7 MW, constituting approximately 3.8% of the available wind capacity.

hypothetical market segment of PPAs, the Transaction would not give rise to any horizontal overlap, as Andel has not entered into any of these agreements.⁹³

- (81) All producers of renewable electricity consulted in the market investigation confirmed to have entered into PPAs with retail suppliers or end customers⁹⁴, and all except one indicated that there are no major economic or regulatory obstacles or barriers for the owner of a generation asset to enter into PPAs with retail suppliers or with end-customers for the supply of “green” or renewable energy.⁹⁵ And while a slight majority were of the view that there is currently no sufficient installed capacity in Denmark to satisfy the demand of PPAs for the supply of “green” or renewable energy, one producer indicated that demand is increasing but that “at the moment it looks like there is enough supply” and other indicated that new generation would need to be developed to meet this demand rising demand.⁹⁶
- (82) Finally, *all* competitors and customers that expressed a view confirmed that there are, besides Energi Danmark, other suppliers that can supply “green” electricity backed by PPAs with owners of renewable assets and were capable of identifying several suppliers. One competitor indicated that the following suppliers could provide PPAs: Danske Commodites, Centrica, Energy Trading, Norlys, Midtjysk Elhandel, Ørsted, NRGi Better Energy and European Energy (the last two, possibly through partners).⁹⁷

(F) Conclusion on non-coordinated horizontal effects in the markets of retail supply of electricity for large industrial customers

- (83) In conclusion, the Transaction is unlikely to raise any competition concerns in the retail supply of electricity to large industrial customers, regardless of whether the product market is defined as including all industrial customers with annual consumption above 0.1 GWh or different markets are defined according to the size (consumption) of the customers (customers with annual consumption between 0.1 and 2 GWh/between 2 and 10 GW/above 10 GWh). This is due to the following reasons: (i) the Parties’ combined shares do not exceed 40% neither in the overall market nor for the different customer size categories (except in the category of customers with annual consumption above 10GWh, but in that category the share increment is limited and Energi Danmark’s share has decreased significantly in the last years); (ii) the Parties appear not to be close competitors; (iii) there are a number of credible alternative suppliers that will remain in the market; (iv) there are no major obstacles for customer to switch supplier; and (v) there are no barriers for competitors to expand production in case the Parties were to increase prices post-Transaction. As regards the retail supply of “green” electricity to large industrial customers via PPAs, the Parties’ activities do not overlap and there are other alternative suppliers in the market.

⁹³ Form CO, paragraph 337.

⁹⁴ See replies to question 4 of questionnaire to generators.

⁹⁵ See replies to question 5 of questionnaire to generators.

⁹⁶ See replies to question 6 of questionnaire to generators.

⁹⁷ See replies to question 23 of questionnaire to customers, see replies to question 27 of questionnaire to competitors.

6.2.2. Retail supply of gas to large industrial customers

- (84) The Parties also overlap in the retail supply of gas to large industrial customers. Their market shares and those of their main competitors are set out in Table 13 and Table 14, both in volume and in PoDs.⁹⁸

Table 13: Retail sale of natural gas to large industrial customers in Denmark in volume

	million m ³			%		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[5-10]%	[10-20]%	[20-30]%
E. Danmark	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
<i>Combined</i>	[...]	[...]	[...]	[5-10]%	[10-20]%	[20-30]%
Ørsted	[...]	[...]	[...]	[30-40]%	[20-30]%	[20-30]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Norlys	[...]	[...]	[...]	[30-40]%	[30-40]%	[30-40]%
Energi Fyn	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
DCC	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
NRGi	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
E.on	[...]	[...]	[...]	[10-20]%	[5-10]%	[5-10]%
Others	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Total market	[...]	[...]	[...]	100%	100%	100%

(85) Source: Form CO, Table 44.

Table 14: Retail sale of natural gas to large industrial customers in Denmark in PoDs

	# PoDs			%		
	2018	2019	2020	2018	2019	2020
Andel	[...]	[...]	[...]	[10-20]%	[10-20]%	[20-30]%
Energi Danmark	[...]	[...]	[...]	[5-10]%	[5-10]%	[5-10]%
<i>Combined</i>	[...]	[...]	[...]	[10-20]%	[20-30]%	[30-40]%
Ørsted	[...]	[...]	[...]	[30-40]%	[20-30]%	[20-30]%
OK	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Norlys	[...]	[...]	[...]	[30-40]%	[30-40]%	[30-40]%
Energi Fyn	[...]	[...]	[...]	[10-20]%	[10-20]%	[10-20]%
DCC	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
NRGi/Gul Strøm	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
E.on	[...]	[...]	[...]	[0-5]%	[0-5]%	[0-5]%
Others	[...]	[...]	[...]	-	-	-
Total market	[...]	[...]	[...]	100%	100%	100%

(86) Source: Form CO, table 45.

- (87) The above tables show that Energi Danmark's presence in this market is residual and decreasing over time. Its presence in terms of points of delivery is higher than in volume, which is a reflection, like in electricity, of the fact that its customers are larger than the average of the market. However, the points of delivery also decreased in the last year ([...]) and so did the volume of gas served ([...]). Taking into account the volumes sold, the Transaction would imply the combination of the second and seventh players in the market and there would remain, post-Transaction, up to five players with market shares higher or significantly higher than the market share increase brought about by the Transaction.

⁹⁸ Energi Danmark also has a negligible sales to small industrial customers ([...]).

- (88) Energi Danmark submits that it no longer offers natural gas to consumers and is thus no longer active on the market. [...].⁹⁹ While Energi Danmark maintains that there are no internal documents where the decision to withdraw from this market is reflected,¹⁰⁰ it seems consistent, both with the evolution of its sales and market presence in the last three years, with the figures provided of active customers,¹⁰¹ and also with the perception of other market participants. In particular, the majority of the customers that expressed a view in the market investigation indicated that they do *not* perceive Energi Danmark as a current or potential supplier of gas.¹⁰²
- (89) In any case, the majority of market participants have expressed their view that (i) the Parties are not particularly close competitors in this market,¹⁰³ (ii) that they do not have any competitive advantage in the supply of gas,¹⁰⁴ (iii) that there are alternative suppliers to the Parties,¹⁰⁵ and (iv) that the Transaction is unlikely to lead to an increase in gas prices in the retail supply to large industrial customers.¹⁰⁶
- (90) In view of the above, the Commission considers unlikely that the Transaction may give rise to any horizontal effects in the retail supply of gas to large industrial customers.

6.3. VERTICAL EFFECTS

- (91) There are other potential vertical links identified by the Parties which give rise to the following vertically affected markets, which are analysed in this Section.

6.3.1. *Generation and wholesale supply of electricity (upstream) and retail supply of electricity to large industrial customers (downstream)*

- (92) Andel has a very limited presence in generation and wholesale supply through a windfarm it jointly controls and a self-standing single wind turbine, with an overall share of approximately [0-5]% of the market in Denmark in terms of production in 2020.¹⁰⁷ Energi Danmark does not own production facilities, but it buys electricity at the exchanges (Nord Pool, EPEX) and sells to other electricity retailers (“downstream wholesale”) or to their own large industrial customers (retail sale).¹⁰⁸ These downstream sales represent a share in terms of production in 2020 of approximately [10-20]% of the total production of the generation and wholesale supply market in Denmark and [10-20]% of the total consumption. Therefore, the

⁹⁹ [...].

¹⁰⁰ [...].

¹⁰¹ See footnote 100.

¹⁰² See replies to question 35 of questionnaire to customers. As to competitors, two of the five that expressed a view were of the same opinion (see replies to question 45 of questionnaire to competitors).

¹⁰³ See replies to question 36 of questionnaire to customers.

¹⁰⁴ See replies to question 37 of questionnaire to customers.

¹⁰⁵ See replies to question 38 of questionnaire to customers, see replies to question 48 of questionnaire to competitors.

¹⁰⁶ See replies to question 42 of questionnaire to customers, see replies to question 51 of questionnaire to competitors.

¹⁰⁷ Form CO, paragraphs 114 and following.

¹⁰⁸ Form CO, paragraphs 120.

Parties' combined share would be between [10-20]% (in terms of production) and [10-20]% (in terms of consumption).¹⁰⁹

- (93) The Commission considers that it is unlikely that the Transaction may give rise to any customer or input foreclosure, for the following reasons.
- (94) First of all, because Andel already purchases [...] its electricity supplies from Energi Danmark, the Transaction cannot give rise to [...] customer foreclosure.
- (95) Second, as regards input foreclosure, the Parties do not appear to have the ability to restrict to downstream rivals access to electricity. In the first place, the combined entity's share post-Transaction will be limited, so it cannot be assumed to have a significant degree of market power in the upstream market. In the second place, there are sufficient alternative suppliers upstream¹¹⁰ and since electricity is a homogeneous product it cannot be said that any of these alternative suppliers are less efficient than the Parties in any meaningful way. In the third place, the electricity sold by Energi Danmark is traded on the Nord Pool exchange, so Energi Danmark is not in a position to set or influence its price, and the market investigation has not revealed any relevant barriers or significant costs for retailers to switch electricity supplier. In the fourth place, other competitors of the Parties in the downstream market are also vertically integrated.¹¹¹
- (96) Third, and most importantly, Andel already purchases [...] its electricity supplies via Energi Danmark – and according to the Notifying Party [...] –¹¹² and the electricity purchased by Andel from Energi Danmark already represents [...]% of the total sales of Energi Danmark in the generation and wholesale market in Denmark.¹¹³ In other words, the Parties already are highly integrated from a commercial point of view. This means that, even if the Parties had the ability to put in place a strategy to restrict access to their competitors, such a strategy would not have any meaningful effects neither on the volume of electricity – as it would equate to withdrawing from the market a [...]% of Energi Danmark's total sales in the market, i.e. approximately a [0-5]% of the total consumption in the Danish market – nor on its price and, given these very limited effects, the Parties would have no meaningful incentive for engaging in such a strategy.
- (97) Fourth, the replies to the market investigation seem to support these conclusions. A majority of producers of electricity replied that the Parties would not have, post-Transaction, the ability and incentive to restrict or limit their access to a customer base for the wholesale supply of electricity.¹¹⁴ One generator which is also vertically integrated [Ørsted] indicated that, although the combined entity will have a relevant market position in the downstream market and a strong product line, the Transaction would not change the situation as Andel and Energi Danmark were already “working together”.¹¹⁵ Moreover, while the Parties' competitors' in the downstream market

¹⁰⁹ Form CO, paragraphs 127.

¹¹⁰ Such as Ørsted, Vattenfall, Aalborg Energi, HOFOR and Fjernvarme Fyn.

¹¹¹ According to the Notifying Party, this includes the Parties' main competitor in the retail supply to large industrial customers, Ørsted, and a new entrant (Vattenfall) (Form CO, paragraph 431).

¹¹² Form CO, paragraph 76.

¹¹³ Reply to question 3.2 of RFI 5.

¹¹⁴ See replies to question 12 of questionnaire to generators.

¹¹⁵ See replies to question 13 of questionnaire to generators

were divided as to whether Energi Danmark had a competitive advantage in the retail supply of electricity to large industrial customers resulting from its role as wholesaler of electricity or balancing responsible party,¹¹⁶ none of them considered that the Parties had the ability and/or the incentive to restrict or limit their access to the purchase of electricity.¹¹⁷ Finally, none of the respondents to the market investigation considered that the Transaction could lead to an increase of prices in the generation and wholesale market in electricity, nor in the retail supply of electricity.¹¹⁸

- (98) In view of the above, the Commission takes the view that it is unlikely that the Transaction may give rise to any foreclosure effects in the vertical relationship between generation and wholesale supply of electricity and retail supply of electricity to large industrial customers.

6.3.2. *Generation and wholesale supply of electricity (upstream) and e-mobility services (downstream)*

- (99) Andel controls Clever A/S ('Clever'), an entity active in e-mobility services, installing and operating charging stations for electric vehicles in Denmark in public locations and also offering charging stations to households and businesses.¹¹⁹ This market would therefore be downstream from the market for the generation and wholesale supply of electricity in Denmark, where both Andel and Energi Danmark are present.
- (100) The Notifying Party estimates Clever's market shares, based on the number of available charging points, to be around [40-50]%.¹²⁰
- (101) Despite this relatively high share, Commission considers unlikely that the Transaction may lead to any vertical effects.
- (102) As already mentioned in paragraph (94), input foreclosure is unlikely due to the Parties' relatively low combined share in the generation and wholesale supply market and to the small increment resulting from the Transaction. Moreover, there are a number of other competitors available and it does not result from the market investigation that there are any relevant costs or barriers to switch supplier. Finally, as the Notifying Party submits, final customers always have the option of charging their car at home, whereby the customer's own electricity supplier delivers the power.¹²¹
- (103) Customer foreclosure is also implausible for several reasons. First, there are alternative suppliers in the downstream market, accounting for almost [60-70]% of the market. Second, e-mobility experiences are expected to experience a significant

¹¹⁶ See replies to question 41 of questionnaire to competitors. The advantages indicated were a deep knowledge of the market or direct access from wholesale to the final customer, thus eliminating the retailer.

¹¹⁷ See replies to question 42, 52 of questionnaire to competitors.

¹¹⁸ See replies to question 14 of questionnaire to generators. The vast majority in fact replied that prices will remain essentially at the same level.

¹¹⁹ Form CO, paragraphs 14 and 70.

¹²⁰ Reply by Andel to question 4 of RFI 5.

¹²¹ Reply by Andel to question 4 of RFI 5.

growth in the following years, which will incentivise new entry and expansion of the current players, thus making any customer foreclosure strategy ineffective. And third, and most important, e-mobility players represent only a negligible fraction of the demand of electricity, which means that even if the combined entity had the ability and incentive to foreclose e-mobility customers, electricity suppliers would have a wide array of other alternative customers available, from essentially any economic sector.

(104) In view of the above, the Commission takes the view that it is unlikely that the Transaction may give rise to any foreclosure effects with respect to the vertical relationship between generation and wholesale supply of electricity and e-mobility services.

6.3.3. *Balancing power services (upstream) and retail supply of electricity to large industrial customers (downstream)*

(105) Energi Danmark is a balance responsible party in Denmark in terms of production, trade, and consumption. Andel currently has a portfolio agreement with Energi Danmark to secure continuous supply and balancing of physical electricity for the retail consumers' continuous consumption of electricity.¹²² That means that, on a daily basis, Energi Danmark prepares a consumption forecast and submits it to the TSO, Energinet. Energi Danmark, as balancing responsible party for Andel, is financially liable towards Energinet in terms of any imbalances between expected and actual consumption during the day. Any such imbalances are covered by the capacity reserves procured by Energinet.

(106) Energi Danmark's presence in the balancing market is moderate or low. Its share for sale of the overall balancing power in Denmark is estimated to be less than 10%. Taking into account the hourly reserves, Energi Danmark's share would be [0-5]% in FCR (primary reserve) and [10-20]% in mFRR (tertiary or manual reserve).¹²³

(107) Balancing services provided by Energi Danmark to Andel – and potentially to other retailers – are associated to the supply of physical electricity. Therefore, for the same reasons applicable to the vertical link between generation and wholesale supply and retail supply to large industrial customers, the Commission considers any vertical effects resulting from Energi Danmark's activity as balance responsible party to be unlikely.

¹²² Form CO, paragraphs 151-152.

¹²³ Reply to question 1.4 of RFI 5. Energi Danmark is not present in the secondary reserve (aFRR) and there are no non-hourly reserves (FADR and PLR) in Denmark according to the Parties. These shares represent sales to the TSO, Energinet, to maintain the frequency of the electricity grid. Andel does not purchase FCR or mFRR reserves from Energi Danmark, only Energinet does so. But as explained in paragraph [...], Energi Danmark is financially liable towards Energinet in terms of any imbalances between expected and actual consumption during the day and any such imbalances are covered by the capacity reserves procured by Energinet.

- (108) First of all, as regards customer foreclosure, Andel already purchases [...] balancing services from Energi Danmark, which means that the Transaction cannot give rise to [...] customer foreclosure.¹²⁴
- (109) Second, as regards input foreclosure, Energi Danmark's share post-Transaction is moderate or even low, so it cannot be assumed to have a significant degree of market power in the upstream market. Second, there are other alternative providers of balancing services¹²⁵ and it does not result from the market investigation that Energi Danmark has any particular competitive advantage in the provision of this service, that other providers may be less efficient or that there are significant barriers or costs to switch service provider. Therefore, the parties do not appear to have post-Transaction the ability to limit to downstream competitors their access to adequate balancing services.
- (110) Third, the results of the market investigation are consistent with these conclusions. None of the balancing responsible parties consulted in the market investigation perceives Energi Danmark as being, in its role of balance responsible party, an indispensable partner for retailers or producers of electricity for the sale of electricity or for the provision of balancing services.¹²⁶ In the same line, none of them considered that the Transaction would have any impact on the balancing services market.¹²⁷ And *all of them* agreed that the combined entity would not have post-Transaction, the ability to foreclose or restricting access to other suppliers.¹²⁸
- (111) As regards the Parties' competitors in the retail supply market, all players that responded to the market investigation agreed that, besides Energi Danmark, there are other balancing responsible parties to which they could turn to for the supply of electricity to large industrial customers, mentioning names such as Danske Commodities, Centrica, Markedskraft "and many others".¹²⁹ One of the competitors [NRGi], in particular, indicated that although they currently "*use Energi Danmark as balancing responsible partner on a part of [their] portfolio and Danske Commodities on another part of [their] portfolio. It would not limit our business to change our balancing setup to only one partner*", thus underlying the lack of obstacle to switch supplier.¹³⁰ This same competitor underlined the "*large number of balancing companies*" as the main reason to be express any concerns in relation to the Transaction.¹³¹ And whilst it is true that competitors were divided as to whether Energi Danmark had a competitive advantage in the retail supply of electricity to large industrial customers resulting from its role as a balancing responsible party,¹³²

¹²⁴ Furthermore, as explained in Sections 6.2.1.2(C) and 6.2.1.2(D), there are a number of credible alternative retailers of electricity to large industrial customers (and to other customers) that will remain in the market post-Transaction and there are no significant obstacles for these and other smaller retailers to expand.

¹²⁵ Such as Centrica, Danske Commodities, Markedskraft.

¹²⁶ See replies to question 8 of questionnaire – balancing power.

¹²⁷ See replies to question 12 of questionnaire – balancing power.

¹²⁸ See replies to question 13 of questionnaire – balancing power. One of the balancing parties (NEAS) considered that the Transaction would have a negative impact for them due to Energi Danmark's greater financial strength (Q.10).

¹²⁹ See replies to question 43 of questionnaire to competitors.

¹³⁰ See replies to question 43 of questionnaire to competitors.

¹³¹ See replies to question 52 of questionnaire to competitors.

¹³² See replies to question 41 of questionnaire to competitors.

none of them considered that, post-Transaction, the Parties would have the ability and/or incentive, to restrict or limit their access to balancing services.¹³³

- (112) Finally, as regards the impact of this vertical relationship on the provision of “green” electricity through PPAs, when asked whether Energi Danmark had any competitive advantage resulting from its position as balancing responsible party to enter into PPAs on behalf of or for customers, market players were divided. But of those producers that indicated that there was some sort of advantage, one explained that all balancing responsible parties have the same advantage and another one explained this advantage in terms of simplicity (less contracts to be signed for the producer).¹³⁴ In any case, *all* producers that replied to the market investigation were of the view that Energi Danmark is not an indispensable partner (due to its role as balance responsible party) for them to enter into PPAs with customers in Denmark,¹³⁵ and *all* of them agreed that in case they needed to enter into a PPA with customers in Denmark, there would be alternatives to Energi Danmark as balancing responsible party that could provide balancing services, mentioning players such as Danske Commodities, Centrica, Ørsted, Axpo or Vattenfall.¹³⁶
- (113) In view of the above, the Commission takes the view that it is unlikely that the Transaction may give rise to any foreclosure effects with respect to the vertical relationship between balancing power services and retail supply of electricity to large industrial customers.

6.3.4. *Distribution of electricity (upstream) and retail supply of electricity to large industrial customers (downstream)*

- (114) Andel owns Cerius A/S (‘Cerius’) and Radius Elnet A/S (‘Radius’), two DSOs which own and run the electricity distribution networks in certain areas of Eastern Denmark.¹³⁷ In the distribution markets concerning those areas, therefore, Andel has a 100% market share. Energi Danmark does not have any activities in distribution but it is present (as Andel) in the downstream market for the supply of electricity to large industrial customers.
- (115) Denmark has implemented the EU legislation concerning unbundling and regulated third-party access is in place both for transmission and distribution activities, as confirmed by the Danish Utility Regulator (‘Forsyningstilsynet’, ‘DUR’).¹³⁸
- (116) The Notifying Party argues that distribution activity is subject to intense regulation, which would leave no room for Andel to engage in any input foreclosure or

¹³³ See replies to question 42 of questionnaire to competitors.

¹³⁴ Generators, Q9. [Ørsted] explained that “*Energi Danmark will be able to provide both retail services and balancing as well as PPA volumes which would make it easier for corporates to transact with Energi Danmark compared to a developer which cannot do the balancing services for the corporate. These developers would first need to make a separate agreement with the provider of balancing services which may mean that the corporate will need two agreements*”.

¹³⁵ See replies to question 12 of questionnaire to generators.

¹³⁶ See replies of question 10 to generators.

¹³⁷ Form CO, paragraph 14.

¹³⁸ See minutes of the call with DUR of 16 June 2021. See also COMP/M.3868, DONG / Elsam / Energi E2, paragraphs 46-48.

discrimination strategy after (or before) the Transaction.¹³⁹ The legislation in force includes a number of obligations for DSOs aiming at avoiding discrimination between integrated and third-party suppliers, such as (i) obligation to provide non-discriminatory access to their networks and to customer data to all electricity suppliers; (ii) obligation to set tariffs and access conditions on the basis of fair, objective and non-discriminatory principles, with prices being determined on the basis of publicly available methods and approved by DUR; and (iii) profit band regulation which imposes certain limits on DSO's income and costs.¹⁴⁰

- (117) The Commission notes that on May 2021 the Danish NCA published a study on the retail electricity markets in Denmark – carried out at the request of the Ministry of Climate, Energy and Utilities – focusing on whether vertically integrated retailers pose a competitive problem in these markets.¹⁴¹ The NCA, in particular, analysed whether vertically integrated retailers enjoy any competitive advantage in the retail market. The conclusion of the study is that, although there is still a relatively low switching rate in Denmark compared to other European countries (which according to the NCA might be an indication of the existence of barriers to entry due to the presence of vertically integrated operators), there is no indication in the market of systematic differences between electricity prices or gross margins between integrated and non-integrated retailers and that, in fact, non-integrated retailers, have been increasingly capturing more customers over time. The NCA also found that low prices and low gross margins in isolation as well as low concentration at national level were indicators of a well-functioning competition in the market.¹⁴² The overall conclusion of the NCA is that although there are signs that competition in the retail electricity market could improve, there is no indication that vertically integrated suppliers enjoy any particular competitive advantage *vis-à-vis* independent retailers.¹⁴³

¹³⁹ Form CO, paragraphs 89-99.

¹⁴⁰ The band consists of a cost band and a rate of return band, which together determines the upper range for how much a network distribution company can charge annually to cover the company's costs and ensure a fair return on the invested capital (see Form CO, paragraph 91).

¹⁴¹ <https://www.kfst.dk/analyser/kfst/publikationer/dansk/2021/20210503-analyse-af-konkurrencesituationen-pa-detailmarkedet-for-el/>. The main focus of the study was on the consumer and small business customers, although it also touches upon the segment of larger B2B customers (see email by Danish NCA of 28 May 2021).

¹⁴² Although the NCA also warns that more recent increases in gross margins should be closely monitored. The NCA also found that integrated companies appear to have a legacy of inactive customer base from the time before the liberalisation although it noted that this situation is historically contingent and that, probably, even in the case of full unbundling, such an inactive customer base would remain inactive.

¹⁴³ A study on the unbundling regulation was also undertaken by DUR on October 2019 (<https://forsyningstilsynet.dk/aktuelt/publikationer/elmarkedet/undersogelse-af-konkurrencesituationen-paa-elmarkedet-med-fokus-paa-de-koncernforbundne-virksomheders-aktiviteter>, see email by Danish NCA of 28 May 2021). This study focused on whether the regulation in place in Denmark ensured effective separation between activities within integrated groups. The conclusion was that there were some areas where regulation does not ensure neutral and independent behaviour of network operators and where rules and/or enforcement could be strengthened. However, DUR also stressed that its analysis focused on regulatory weaknesses, but it did not conclude on whether DSOs abused on these weaknesses or whether there had been any anticompetitive conducts in the market. These conclusions were reiterated in a call held by DUR and the European Commission where DUR expressed the view that the lack of recent new entrants and the relatively low switching rate in Denmark could be due to obstacles for non-vertically integrated companies. But DUR also affirmed to have conducted a study which showed that the main DSOs in Denmark were compliant with the regulation in force (see minutes of call of 16 June 2021).

- (118) This conclusion seems supported by the market investigation. *All* retailers responding to the market test were of the view that suppliers such as Andel do not have any competitive advantage with respect to non-integrated suppliers, for instance in the form of better tariffs, preferential conditions, easier access to data of final customers etc.¹⁴⁴ Moreover, *none* of those suppliers said to have ever been discriminated by Andel (or by any other supplier) *vis-à-vis* integrated suppliers.¹⁴⁵ At the same time, none of the competitors in the downstream retail supply market which replied to the market investigation considered that the combined entity would have, post-Transaction, the ability to distort competition in the market, for instance, by reducing the quality of services or foreclosing or restricting access to necessary services (such as distribution).¹⁴⁶
- (119) In view of the above, the Commission takes the view that it is unlikely that the Transaction may give rise to any foreclosure effects with respect to the vertical relationship between distribution of electricity and retail supply of electricity to large industrial customers.

6.3.5. *Certificates trading (upstream) and retail supply of electricity to large industrial customers (downstream)*

- (120) Energi Danmark is active in the sale of GoOs and CO2 allowances under ETS.¹⁴⁷ Andel currently purchases GoOs and CO2 allowances from Energi Danmark and also from third parties.¹⁴⁸
- (121) Energi Danmark's share in 2020 in the market for sales of GoOs in the EU is approximately [0-5]%,¹⁴⁹ whereas in the CO2 allowances in the EU, its share would be even lower, approximately [0-5]%.¹⁵⁰
- (122) In view of the negligible presence of Energi Danmark in the upstream markets and the fact that Andel already purchases [...] of its needs of these certificates from Energi Danmark, the Commission considers it unlikely that the Transaction may give rise to any foreclosure effects in respect to this vertical link.

6.3.6. *Financial trading of electricity (upstream) and retail supply of electricity to large industrial customers (downstream)*

- (123) Energi Danmark offers a wide range of financial hedging instruments to both consumption and production customers.¹⁵¹ Andel has entered into a management agreement with Energi Danmark Securities, enabling Andel to enter into financial trading agreements in the Nordic countries and in Germany. Andel does not have other financial trading partners.¹⁵²

¹⁴⁴ See replies to question 38 of questionnaire to competitors.

¹⁴⁵ See replies to question 39 of questionnaire to competitors.

¹⁴⁶ See replies to question 52 of questionnaire to competitors.

¹⁴⁷ Form CO, paragraph 142.

¹⁴⁸ Form CO, paragraph 140-141.

¹⁴⁹ Form CO, paragraph 147.

¹⁵⁰ Form CO, paragraph 148.

¹⁵¹ Form CO, paragraph 133.

¹⁵² Form CO, paragraph 133.

- (124) Energi Danmark's share in 2020 in the market for the sale of financial electricity instruments excluding EPADs in the Nord Pool area is approximately [0-5]%. As regards EPAD-sales, Energi Danmark's share would represent circa [10-20]% and [5-10]% in each of the Denmark's pricing zones (DK1 and DK2, respectively) and less than 10% national-wide.¹⁵³
- (125) In view of the fact that Andel already purchases [...] financial trading needs from Energi Danmark and the very limited market shares of the latter, the Commission considers it unlikely that the Transaction may give rise to any foreclosure effects in respect to this vertical link.

7. CONCLUSION

- (126) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

¹⁵³ Form CO, paragraph 137.