



EUROPEAN COMMISSION
DG Competition

Case M.10719 - PGGM / DIF / FUDURA

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 03/08/2022

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EUROPEAN COMMISSION

Brussels, 03.08.2022
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject: Case M.10719 - PGGM / DIF / FUDURA
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 28 June 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which PGGM

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').

Vermogensbeheer B.V. ('PGGM', the Netherlands), and DIF Management B.V. ('DIF', the Netherlands), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Fudura B.V. ('Fudura', the Netherlands). (PGGM and DIF are designated hereinafter as the 'Notifying Parties' and together with Fudura, the 'Parties').

1. THE PARTIES

- (2) PGGM is charged with the management of PGGM Infrastructure Fund, including investment management, the exercise of any voting rights attached to the assets, fund organisational affairs, fund governance, administration, valuation and reporting. PGGM is a subsidiary of PGGM N.V., a Dutch pension administrator specialised in the administration of collective pensions. It manages the pensions for different pension funds, the affiliated employers and their employees. One of PGGM's portfolio companies, Ennatuurlijk, is an operator of district heating networks in 40 municipalities (covering approximately 80 districts) and a generator and supplier of heat in the Netherlands.
- (3) DIF is an independent fund management company with a focus on infrastructure investments. It focuses on investments in the energy (transition), renewable energy generation and other economic infrastructure in core, telecom, transportation and social infrastructure sectors in Europe, the Americas and Australasia.
- (4) Fudura is a B2B energy infrastructure provider active in (i) the operational lease, installation and operation and maintenance of integrated high, medium or low voltage grid infrastructure (transformers, switch gears and stations), (ii) the engineering, planning and installing of electric vehicle charging infrastructure and (iii) the lease, installation, operation and maintenance of electricity, gas and heat meters and submeters (including data services such as optimization and (automated) system control).

2. THE CONCENTRATION

- (5) Pre-Transaction, Fudura is solely owned and controlled by Enexis Holding N.V. (the 'Seller').
- (6) On [...], the Seller and [...] acting as purchaser, entered into a signing protocol with an agreed share purchase agreement ('SPA'). [...] is set up as an acquisition vehicle with [...] as its parent. [...] is 50/50-owned by PGGM and DIF. Pursuant to the SPA, [...] will acquire all issued and outstanding shares of Fudura from the Seller.
- (7) The Notifying Parties will enter into a shareholders' agreement ('SHA') in relation to [...] on closing. From the SHA, it follows that the Notifying Parties, through [...], will acquire indirect joint control over Fudura:
 - (a) The Notifying Parties will have equal shareholding in [...], resulting in equal representation and number of votes in [...] general meeting.³ Due to this

³ Schedule 2 SHA.

equal representation in the general meeting, each of the Parties can take or block decisions [...]. The SHA additionally provides that [...],⁴ [...];⁵

- (b) [...] management board and supervisory board will take decisions by simple majority.⁶ Pursuant to Schedule 3 (Part II) SHA, the business plan and appointment of senior management of [...] is a supervisory board reserved matter requiring approval of a director of each of the Notifying Parties. [...];⁷
 - (c) Article 16 SHA contains a deadlock mechanism, [...]. In the absence of a resolution, the deadlock remains unresolved.
- (8) Consequently, post-Transaction, PGGM and DIF will acquire joint control over Fudura within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (9) The Transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (PGGM: EUR [...] million, DIF: EUR [...] million, Fudura: EUR [...] million). Two of them have a Union-wide turnover in excess of EUR 250 million (PGGM: EUR [...] million, DIF: EUR [...] million), and the undertakings concerned do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

4. MARKET DEFINITION

4.1. Electrical engineering services

4.1.1. Product market definition

- (10) Electrical engineering services include services on electrical and telecommunications networks, on substations, on power-supply, and on public lighting. In its past decisional practice, the Commission has distinguished between the provision of (i) electrical, (ii) mechanical and (iii) thermal/air-conditioning engineering services, although it left the precise market definition open.⁸
- (11) Within electrical engineering services, the Commission has considered but left open the possibility of further sub-segmenting the market depending on (i) the type of business (residential/non-residential); (ii) the type of work (installation/maintenance); and (iii) the nature of the service (infrastructure/industry/tertiary sector).⁹

⁴ Article 7.1 SHA.

⁵ Schedule 4 – Part B SHA.

⁶ Articles 5.10 and 7.15 SHA.

⁷ Article 11.2 SHA.

⁸ Cases COMP/M.10314 – *Vinci S.A./Energia Y Servicios Dinsa II*, decision of 25 October 2021, paragraph 8; COMP/M.6623 – *Vinci/EVT*, paragraph 7; COMP/M.5701 – *Vinci/Cegelec*, decision of 26 March 2010, paragraphs 14-21.

⁹ Cases COMP/M.10314 – *Vinci S.A./Energia Y Servicios Dinsa II*, decision of 25 October 2021, paragraph 9; COMP/M.9270 – *Vinci Airports/Gatwick Airport*, decision of 15 March 2019, paragraph 21; COMP/M.6623 – *Vinci/EVT*, paragraphs 7-8.

- (12) In addition, within electrical engineering services, the Commission has considered that engineering services on (i) telecommunication networks, (ii) substations,¹⁰ and (iii) power lines might constitute distinct markets.¹¹ Finally the Commission has also considered but left open in past decisions potential distinct markets for electrical engineering services on public lighting, including street and public place lighting, traffic signals, and the illumination of places, monuments and buildings, distinguishing between installation and maintenance services.¹²
- (13) The Notifying Parties' submissions do not depart from the Commission's past decisional practice.¹³ They do indicate, however, that the sub-segment of substations within electrical engineering services includes both the rent/lease of the hardware (i.e. the substation) and the related services (installation and maintenance) as an integrated solution. The Notifying Parties have confirmed that there are no customers in the Netherlands that rent a substation without acquiring/contracting the additional installation and maintenance services at the same time from the same supplier. Moreover, the Notifying Parties have confirmed that there are no suppliers of substations in the Netherlands providing leasing/renting services on a standalone basis, without installation and maintenance services.¹⁴
- (14) In light of the fact that electrical engineering services for substations are always provided together with the rental/lease thereof in the Netherlands, the Commission will therefore, for the purposes of this Decision, carry out its competitive assessment on the basis of a product market comprising both the leasing/renting of substations and installation and maintenance services of the same. No distinction will be made between installation and maintenance, as all providers in the Netherlands provide both installation and maintenance as one package. No distinction will be made between residential and non-residential customers either, as all customers within the substation segment are all non-residential.¹⁵ The Commission leaves open whether a distinction based on infrastructure/industry/tertiary sector should be made, but will make this distinction for the purposes of the competitive assessment in order to assess the narrowest plausible market, which for the purposes of this Decision, would be the infrastructure sector.

¹⁰ Case COMP/M.8870 – *E.ON/Innogy*, decision of 17 September 2019, footnote 583: substations, also known as transformer stations, are electrical devices that transfer electricity between two or more circuits through electromagnetic induction.

¹¹ Cases COMP/M.10314 – *Vinci S.A./Energia Y Servicios Dinsa II*, decision of 25 October 2021, paragraph 10; COMP/M.6623 – *Vinci/EVT*, paragraph 10; COMP/M.5701 – *Vinci/Cegelec*, decision of 26 March 2010, paragraphs 22-24.

¹² Cases COMP/M.10314 – *Vinci S.A./Energia Y Servicios Dinsa II*, decision of 25 October 2021, paragraph 10; COMP/M.7137 – *EDF/Dalkia en France*, decision of 25 June 2016, paragraph 132.

¹³ Form CO, paragraph 72.

¹⁴ Response of the Parties to question 1(a) RFI I-1 of 28 July 2022.

¹⁵ Response of the Parties to question 1(b) RFI I-1 of 28 July 2022.

4.1.2. *Geographic market definition*

- (15) In its past decisional practice, the Commission has considered the geographic scope of electrical engineering markets to be at least national in scope, although the precise definition was ultimately left open.¹⁶
- (16) The Notifying Parties' submissions do not depart from the Commission's past decisional practice.¹⁷
- (17) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible geographic market definition, the Commission will leave the exact geographic market definition open for the purposes of this Decision.

4.1.3. *Conclusion*

- (18) The Commission will assess the effects of the Transaction on the following markets:
- (a) Product markets: electrical engineering services relating to substations for non-residential customers, comprising the leasing/renting of substations together with installation and maintenance services limited to the infrastructure sector.¹⁸
 - (b) Geographic markets: the national market in the Netherlands.

4.2. **Metering services**

4.2.1. *Product market definition*

- (19) Metering relates to the measurement of consumed electricity, gas, water or heat, for the purposes of invoicing and providing transparency/optimisation of consumption. In its past decisional practice, the Commission distinguished a product market for metering services.¹⁹
- (20) In *E.ON/Innogy*, which was specific to the German market, the Commission considered the following sub-segments to the metering services market, but ultimately left the exact product market definition open: (i) gas and electricity, possibly segmented between existing metering point operator ('eMPO') / normally responsible metering point operator ('nMPO') and competitive metering point

¹⁶ Cases COMP/M.10314 – *Vinci S.A./Energia Y Servicios Dinsa II*, decision of 25 October 2021, paragraph 16.

¹⁷ Form CO, paragraph 72.

¹⁸ The Commission will for the purposes of the competitive assessment consider only the infrastructure segment, as the market for electrical engineering services is relevant in the case at hand only with regards to a vertical link between Fudura upstream and Ennatuurlijk's provision of district heating downstream. In previous cases, the Commission has considered that the distribution of electricity would fall within the infrastructure category (Case M.6623 – *Vinci/EVT Business*, decision of 31 August 2012, footnote 12). By analogy, the distribution of heat should also be considered to fall within the infrastructure category.

¹⁹ Cases COMP/M.8870 – *E.ON/Innogy*, decision of 17 September 2019, paragraphs 148-171; COMP/M.3874 – *CVC/Ruhrigas Industries*, decision of 1 September 2019, paragraphs 17 and 19; COMP/M.2890 – *EDF/Seaboard*, decision of 25 July 2002, paragraphs 25 and following; COMP/M.1949 – *Western Power Distribution/Hyder*, decision of 14 July 2000, paragraphs 15-16.

operator ('cMPO');²⁰ (ii) heat and water; (iii) sub-metering services;²¹ and (iv) white label services.²²

- (21) The Dutch Authority for Consumers and Markets (the 'Dutch Competition Authority') considered an overall market for gas and electricity metering services in relation to large capacity connections.²³ The provision of gas and electricity metering services includes the following tasks: (i) the supply and installation of meters, (ii) collection of meter reading information, (iii) data analysis to establish the amount of energy consumed, (iv) forwarding of data to operators and (v) maintenance of meters.²⁴ In the same case, the Dutch Competition Authority did not consider similar market segments for heat and water metering.
- (22) The Notifying Parties submit that, for the purposes of this decision, a single market for metering services should be considered and that it should not be further sub-segmented per type of metering. That is because from a supply-side perspective in the Netherlands, metering companies typically offer metering solutions for electricity, gas, heat and water and integrated solutions covering all metering activities (from supplying and maintaining meters to the collection of meter data).²⁵
- (23) However, the Notifying Parties further submit that the competitive landscape differs between the heat metering services for large and small capacity connections (i.e. for the former, metering services can be performed by the district heating supplier or by a third party metering service provider, whilst for the latter, metering services are performed by the district heating supplier), for the reasons listed below.
- (24) *First*, the metering for small capacity connections is covered by certain regulatory requirements. The Notifying Parties submit that under Article 8 of the Heating Supply Act (Warmtewet), heat suppliers are required to provide a metering device to a user that can be read from a distance (i.e. not on the user's premises). The Heating Supply Act, however, only applies to customers with connections with a capacity of up to 100kW (i.e. mostly households and small and medium-sized businesses). Connections with a capacity of more than 100kW (mostly larger corporate customers) are not covered by the Heating Supply Act and customers must negotiate the price, terms and conditions themselves with a metering services supplier of their choice. Consequently, users with large capacity connections of over 100kW often

²⁰ For more information, see Case COMP/M.8870 – *E.ON/Innogy*, decision of 17 September 2019, paragraph 151. The Commission will not go further into the distinction eMPO/nMPO/cMPO in this Decision, as the concepts are specific to the German market and thus irrelevant for the purposes of this Decision.

²¹ Case COMP/M.8870 – *E.ON/Innogy*, decision of 17 September 2019, paragraph 155: sub-metering activities are the measurement of energy and water consumption for allocating the consumption to individual units within a building (e.g. in multi-residential complexes), as opposed to a meter, which measures the consumption of a whole building.

²² White label services are services such as procurement, installation, operation, maintenance and the provision of IT solutions, which are provided to the MPO.

²³ Decision of the Dutch Competition Authority in Case 6015/83 – *Essent N.V./Nuon N.V.*, paragraph 75: small capacity connections refer to connections with capacity up to 100 kW. In turn, large capacity connections refer to connections with capacity above 100 kW.

²⁴ Decision of the Dutch Competition Authority in Case 6015/83 – *Essent N.V./Nuon N.V.*, paragraph 73-75.

²⁵ Form CO, paragraphs 83 and ff.

procure services separately from other services (e.g. procuring energy from one company and metering services from another company).²⁶

- (25) *Second*, Articles 2(3)(e) and 5(1) of the Heating Supply Act provide that the maximum tariff that a supplier can charge for metering services to small capacity connections shall be set by the Dutch Competition Authority. According to the Notifying Parties, for the year 2022, it has been set at EUR 22.70 (excl. VAT).²⁷ Customers that use small capacity connections do not typically choose their own metering company. Instead, the relevant network operator in each heating district is responsible for, and is the owner of, the metering devices, as well as being responsible for the metering data and collection (charging the relevant metering tariff).²⁸
- (26) The Notifying Parties further submit that, in theory, heat metering services can also be provided by third party metering service providers in relation to small capacity connections as there is no regulatory restriction in this respect (i.e. the heat metering services market is liberalised, both in relation to small and large capacity connections in the Netherlands). However, in practice, small capacity connections are typically metered exclusively by the district heating suppliers themselves. This is because no tailored metering services are necessary in relation to small capacity connections and because the maximum regulated metering tariff is relatively low, which makes it less interesting or even commercially unviable for third party metering service providers.²⁹ In this context, the Notifying Parties submit that Fudura does not provide heat metering services in relation to small capacity connections.³⁰
- (27) The Commission has confirmed the Notifying Parties' statements regarding the different regulatory requirements between heat metering for small and large capacity connections in the Netherlands. In light of these requirements, the Commission considers that for the purposes of this Decision, heat metering services in the Netherlands could plausibly be segmented between large (above 100kW) and small (below 100kW) capacity connections. In any event, given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible product market definition, the Commission will leave the exact product market definition open for the purposes of this Decision.

4.2.2. *Geographic market definition*

- (28) In *E.ON/Innogy*, the Commission considered the markets for metering services for heat and water to be local in scope, similarly to the markets for metering services for gas and electricity. This is due to the specific market structure in Germany, since a regulatory framework establishes the network operator as MPO for water and heat metering. The Commission also considered the markets for (i) metering services for

²⁶ Form CO, paragraphs 110-111.

²⁷ ACM, Tariff Decision Heating 2022, p. 52, available at: <https://www.acm.nl/sites/default/files/documents/tarievenbesluit-warmte%202022.pdf>, accessed on 18 July 2022.

²⁸ Form CO, paragraphs 115 and ff.

²⁹ Form CO, paragraph 117.

³⁰ Form CO, paragraph 139(2).

gas and electricity as cMPO; (ii) sub-metering services; and (iii) white label services to be national in scope.³¹

- (29) The Dutch Competition Authority has defined the relevant market for gas and electricity metering services for large connections to be national in scope, noting that nearly all metering companies are active in the entirety of the Netherlands and that the required authorisation from national grid operator TenneT is valid throughout the Netherlands.³²
- (30) The Notifying Parties consider that the Dutch market for metering services is national in scope as metering companies are active throughout the Netherlands. Similarly, the Target is not active locally but serves customers nationwide.³³
- (31) The geographic scope of the market for metering services in the Netherlands can therefore be considered to be national for the purposes of this Decision.

4.2.3. Conclusion

- (32) The Commission will assess the effects of the Transaction on the following markets:
- (a) Product markets: (i) the heat metering services markets, by reference to large and small capacity connections and (ii) the gas and electricity metering services market.
 - (b) Geographic markets: the national market in the Netherlands.

4.3. District heating

4.3.1. Product market definition

- (33) In district heating, steam or hot water is transported through pipes to buildings for heating purposes. A variety of fuels can be used to produce the steam or hot water, such as hard coal, lignite, natural gas, coke oven gas, degassing gas, biomass and light fuel oil. The heat is distributed through dedicated networks owned by local operators.³⁴
- (34) In its past decisional practice, the Commission considered the provision of district heating as a separate product market.³⁵ In *Steag Beteiligungsgesellschaft mbH/Siemens Project Ventures GmbH/Steag GuD Herne GmbH*, the Commission considered a narrower product market distinguishing the production of district heating (including first sales) from the distribution of district heating to final customers (via the district heating network).³⁶ The distinction was made as the JV at issue in that case was not selling directly to final customers, but only to the local

³¹ Case COMP/M.8870 – *E.ON/Innogy*, decision of 17 September 2019, paragraphs 174 and 177.

³² Decision of the Dutch Competition Authority in Case 6015/83 – *Essent N.V./Nuon N.V.*, paragraphs 123-125.

³³ Form CO, paragraph 87.

³⁴ Case COMP/M.9990 – *Vattenfall GmbH/Engie Beteiligungs-GmbH/Gasag Berliner Gaswerke AG*, decision of 14 December 2020, paragraph 75.

³⁵ Case COMP/M.8860 – *Fortum/Uniper*, decision 15 June 2018, paragraph 147.

³⁶ Case COMP/M.8952 – *Steag Beteiligungsgesellschaft mbH/Siemens Project Ventures GmbH/Steag GuD Herne GmbH*, decision of 21 September 2018, paragraph 17.

network owner. In *E.ON/Innogy*, the Commission did not segment the district heating market between generation and supply.

- (35) With reference to the Commission's decisional practice, the Dutch Competition Authority defined a single market for the construction and exploitation of district heating networks.³⁷
- (36) The Notifying Parties' submissions do not deviate from the Commission and the Dutch Competition Authority's past decisional practice. According to the Notifying Parties, considering that district heating operators are considered to have natural monopolies in relation to their district heating networks, it is not necessary to consider a further distinction between generation and distribution in relation to this market.³⁸
- (37) In relation to all of its district networks, the Notifying Parties submit that Ennatuurlijk is a generator and distributor of district heating, with a few exceptions where in certain district networks Ennatuurlijk does not generate the heat it distributes.³⁹
- (38) The Commission concludes that for the purposes of this Decision, it is not necessary to further segment the market for the generation and distribution of district heating, because in its competitive assessment, it considers that Ennatuurlijk has a natural monopoly in the wider product market in relation to its district heating networks and therefore, the competitive assessment and its outcome would not differ should the market be segmented between the generation and distribution of district heating.
- (39) In any event, the exact scope of the product market for district heating services can be left open because the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible product market definition.

4.3.2. Geographic market definition

- (40) In its past decisional practice, the Commission defined the relevant geographic market as local and limited to the relevant district heating networks.⁴⁰ The Dutch Competition Authority, with reference to *Gaz de France/Suez*,⁴¹ considered the market to be national in scope.⁴²
- (41) The Notifying Parties' submissions do not deviate from the geographic market definition of district heating considered by the Commission in its past decisional practice.⁴³

³⁷ Decision of the Dutch Competition Authority in Case 6015/83 – *Essent N.V./Nuon N.V.*, recital 80.

³⁸ Form CO, paragraph 97.

³⁹ Form CO, paragraph 97.

⁴⁰ Cases M.8860 – *Fortum/Uniper*, recital 150; M.9990 – *Vattenfall GmbH/Engie Beteiligungs-GmbH/Gasag Berliner Gaswerke AG*, recitals 81-83; M.5793 – *Dalkia CZ/NWR Energy*, recital 17; M.5365 – *IPO/ENBW/Praha/PT*, recital 16; M.4238 – *E.ON/Prazska Plynarenska*, recital 21.

⁴¹ Case M.4180 – *Gaz de France/Suez*, recitals 943-945.

⁴² Decision of the Dutch Competition Authority in Case 6015/83 – *Essent N.V./Nuon N.V.*, recital 130.

⁴³ Form CO, paragraph 99.

- (42) Given that the Transaction would not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible geographic market definition (i.e. the relevant district heating network), the Commission will leave the exact geographic market definition for district heating services open.

4.3.3. *Conclusion*

- (43) The Commission will assess the effects of the Transaction on the following markets:
- (a) Product market: the overall market for the generation and distribution of district heating.
 - (b) Geographic markets: the relevant heating distribution networks as well as the overall national market in the Netherlands.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

- (44) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing, pursuant to Articles 2(2) and (3), whether they would significantly impede effective competition in the internal market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

5.1.1. *Horizontal non-coordinated effects*

- (45) Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the Horizontal Merger Guidelines.⁴⁴ Horizontal effects may be non-coordinated or coordinated.
- (46) As regards horizontal non-coordinated effects, according to paragraphs 26 et seq. of the Horizontal Merger Guidelines, a number of factors (the list of which is non-exhaustive) may be taken into account in order to determine whether significant non-coordinated effects are likely to result from a concentration, including the combined entity's market power, closeness of competition and barriers to entry and/or expansion.

5.1.2. *Vertical effects*

- (47) According to the guidance set out in the Non-Horizontal Merger Guidelines,⁴⁵ a merger between undertakings operating at different levels of the supply chain may significantly impede effective competition if such a merger gives rise to foreclosure.⁴⁶ Foreclosure occurs where actual or potential competitors' access to supplies or markets is hampered or eliminated as a result of the merger, thereby

⁴⁴ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 5.2.2014.

⁴⁵ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-Horizontal Merger Guidelines'), OJ C265, 18.10.2008.

⁴⁶ Non-Horizontal Merger Guidelines, paragraphs 17-18.

reducing those companies' ability and/or incentive to compete.⁴⁷ Such foreclosure may also discourage entry or expansion of competitors or encourage their exit.⁴⁸

- (48) The Non-Horizontal Merger Guidelines identify two forms of foreclosure: input and customer foreclosure. Input foreclosure occurs where the merger is likely to raise the costs of downstream competitors by restricting their access to an important input. Customer foreclosure occurs where the merger is likely to foreclose upstream competitors by restricting their access to a sufficient customer base.⁴⁹
- (49) Pursuant to the Non-Horizontal Merger Guidelines, input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.⁵⁰
- (50) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, *first*, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs; *second*, whether it would have the incentive to do so; and *third*, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.⁵¹
- (51) Pursuant to the Non-Horizontal Merger Guidelines, customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. As a result of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In turn, this may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity to profitably establish higher prices on the downstream market.⁵²
- (52) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, *first*, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals; *second*, whether it would have the incentive to reduce its purchases upstream; and *third*, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.⁵³ For customer foreclosure to be a concern, a vertical merger must involve a company, which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.⁵⁴

⁴⁷ Non-Horizontal Merger Guidelines, paragraph 18.
⁴⁸ Non-Horizontal Merger Guidelines, paragraph 29.
⁴⁹ Non-Horizontal Merger Guidelines, paragraph 30.
⁵⁰ Non-Horizontal Merger Guidelines, paragraph 31.
⁵¹ Non-Horizontal Merger Guidelines, paragraph 32.
⁵² Non-Horizontal Merger Guidelines, paragraph 58.
⁵³ Non-Horizontal Merger Guidelines, paragraph 59.
⁵⁴ Non-Horizontal Merger Guidelines, paragraph 61.

- (53) The three conditions for assessing vertical effects are cumulative so that the absence of any of them is sufficient to rule out the likelihood of anti-competitive customer or input foreclosure.⁵⁵

5.2. Assessment

5.2.1. Introduction

- (54) The Transaction leads to the following horizontal overlaps and vertical links:⁵⁶
- (a) horizontal overlap in the overall market for heat metering services (for both small and large capacity connections) in the Netherlands, where both PGGM, through its solely controlled portfolio company Ennatuurlijk, and Fudura are active;
 - (b) vertical link as regards the provision of heat metering services for large capacity connections in the Netherlands where Fudura is active (upstream) and the provision of district heating services in the Netherlands where Ennatuurlijk is active (downstream);
 - (c) vertical link as regards the provision of gas and electricity metering services for large capacity connections in the Netherlands where Fudura is active (upstream) and the provision of district heating services in the Netherlands where Ennatuurlijk is active (downstream); and
 - (d) vertical link as regards the provision of electrical engineering services on substations, by reference to non-residential business and infrastructure services in the Netherlands where Fudura is active (upstream) and the production and distribution of district heating services in the Netherlands where Ennatuurlijk is active (downstream).

5.2.2. Horizontal overlap

- (55) In this Section, the Commission assesses whether the Transaction would give rise to serious doubts regarding its compatibility with the internal market as a result of the potential elimination of competitive constraints between the Parties in the overall market for heat metering services in the Netherlands.
- (56) For the reasons detailed below, the Commission finds that the Transaction does not give rise to serious doubts regarding its compatibility with the internal market as a result of the horizontal overlaps in the overall market for heat metering services in the Netherlands.

⁵⁵ See Case T-370/17 *KPN BV v European Commission*, Judgment of the General Court of 23 May 2019, EU:T:2019:354, paragraph 119.

⁵⁶ The present Decision assesses the horizontal overlaps and vertical links brought about by the Transaction as regards the narrowest product and geographic market definitions, with the exception of the horizontal overlap in the market for heat metering services in the Netherlands. As regards the latter, the Parties' activities do not overlap in the narrower product markets for the provision of heat metering services, because Fudura only offers heat metering services to large capacity connections, whilst Ennatuurlijk only offers heat metering services to its district heating customers with small capacity connections. For the remaining (vertical) links, the wider product and geographic markets are not further discussed since the Transaction does not raise serious doubts as to its compatibility with the internal market even under the narrowest plausible market definitions.

- (57) Fudura and Ennatuurlijk both offer heat metering services in the Netherlands. However, they operate at two distinct levels of the energy value chain in the Netherlands. Ennatuurlijk's heat metering business is directed to its district heating end-customers with small connections below 100kW, merely being a complementary service to the distribution of district heating. Fudura, on the other hand, is focused on offering standalone heat metering to customers with large capacity connections above 100 kW.
- (58) Thus, while Ennatuurlijk also offers heat metering services, these are not standalone as they are always directed to its district heating end-customers and included as part of its district heating services to them (unless the latter are procured without heat metering services). In contrast, Fudura is active only in the standalone provision of heat metering services. Similarly, Ennatuurlijk only offers (integrated) heat metering services in relation to small capacity connections only, as required under Article 8 of the Dutch Heating Supply Act,⁵⁷ while Fudura provides (standalone) heat metering services only in relation to large capacity connections.
- (59) Therefore, the activities of Ennatuurlijk and Fudura only overlap in a possible wider relevant product market for heat metering services, including both heat metering services as part of integrated services (i.e. supply of heating) and standalone heat metering services, covering both small capacity and large capacity connections. Even on such a wider market, the overlap between Fudura and Ennatuurlijk would be very limited.
- (60) On that wider market, the combined market share of Fudura and Ennatuurlijk is limited at [20-30]% with a small increment from Fudura of [0-5]%. Table 1 below provides an overview of the market shares of the Parties and their competitors in the provision of heat metering services in the Netherlands in 2020, as submitted by the Notifying Parties.

Table 1: Market Shares in the provision of heat metering services

Operator	Heat metering services (the Netherlands, 2020)	
	EUR million	Market Share
Ennatuurlijk	[...]	[20-30]%
Fudura	[...]	[0-5]%
Combined	[...]	[20-30]%
Eneco	[...]	[20-30]%
Vattenfall	[...]	[20-30]%
Eco-Focus	[...]	[10-20]%
HVC	[...]	[0-5]%
Others	[...]	[5-10]%
Total	[...]	100%

Source: Form CO⁵⁸

- (61) Moreover, the post-Transaction HHI is well below 1000 (at 576), and the HHI delta remains below 150 (at 103.68) in 2020. According to the Horizontal Merger Guidelines, “the Commission is unlikely to identify horizontal competition concerns

⁵⁷ See Section 4.2 above.

⁵⁸ Form CO, Table 2.

*in a market with a post-merger HHI below 1 000. Such markets normally do not require extensive analysis”.*⁵⁹

- (62) Finally, considering the fact that Ennatuurlijk and Fudura serve different customer segments as described above, the Parties are not close competitors in the wider market for the provision of heat metering services.
- (63) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the horizontal overlap in the market for heat metering services.

5.2.3. *Vertically affected markets*

5.2.3.1. Heat metering services (upstream) and district heating services (downstream)

- (64) The Transaction gives rise to a vertical link in the Netherlands between Fudura’s upstream provision of heat metering services for large capacity connections and Ennatuurlijk’s downstream generation and supply of district heating. Metering of end-customers’ district heating consumption is an obligation under EU law,⁶⁰ and suppliers of district heating often procure metering services in order to be able to provide an integrated service.⁶¹
- (65) In this Section, the Commission assesses whether the Transaction would result in input foreclosure of Ennatuurlijk’s district heating competitors and/or customer foreclosure of Fudura’s heat metering competitors in the Netherlands. For the reasons detailed below, the Commission finds that the Parties will not have the ability or the incentive to engage in either input, or customer foreclosure strategies.
- (66) Ennatuurlijk and other district heating companies provide heat metering services to small capacity connections as part of their integrated service. Ennatuurlijk has no intention to outsource and purchase on the market heat metering services in relation to these smaller connections. Fudura only provides heat metering services for large capacity connections. As such, there does not exist a (potential) vertical relation for small capacity connections, but only in relation to large capacity connections.⁶²

⁵⁹ Horizontal Merger Guidelines, paragraph 19.

⁶⁰ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC Text with EEA relevance, as amended (the “Energy Efficiency Directive”), Article 9 (1).

⁶¹ Non-Horizontal Merger Guidelines, paragraph 34.

⁶² For the purposes of this Decision, a potential conglomerate link between the market for the generation and supply of district heating to end-customers with large capacity connections of over 100kW (by Ennatuurlijk) and the provision of heat metering services to end customers with large capacity connections of over 100kW (by Fudura) will not be further discussed due to its limited effect. More specifically, the Notifying Parties submit that the vast majority of Ennatuurlijk’s customers are customers with small capacity connections below 100kW. In this context, Ennatuurlijk provides heat metering services itself to these customers. Thus, Ennatuurlijk supplies heat metering services to approximately [90-100]% of its connections to the district heating network. As Fudura only services large capacity connections, Ennatuurlijk’s connections are not an addressable segment for Fudura, nor for other third party heat metering service providers. Furthermore, the remainder of the connections (i.e. approximately [5-10]%) are serviced by third party metering services providers, of which a part is serviced by Fudura. All of the heat connections in relation to which metering services are provided

- (67) Table 2 below provides an overview of the market shares of Fudura and its competitors in the provision of heat metering services to large capacity connections in the Netherlands in 2020, as submitted by the Notifying Parties.

Table 2: Market Shares in the provision of heat metering services for large capacity connections

Operator	Heat metering services for large capacity connections (the Netherlands, 2020)	
	EUR million	Market Share
Fudura	[...]	[20-30]%
Kenter	[...]	[20-30]%
Inmax	[...]	[20-30]%
Anexo	[...]	[10-20]%
TUMS	[...]	[20-30]%
Others	[...]	[10-20]%
Total	[...]	100%

Source: Form CO⁶³

- (68) The Parties hold the following market shares:
- As indicated in Table 2 above, Fudura holds a market share of [20-30]% in the upstream market for the provision of heat metering services for large capacity connections;⁶⁴
 - Ennatuurlijk has a natural monopoly in the downstream market for district heating regarding the districts in which it is active (see recital (75) below).

5.2.3.1.1. Input foreclosure

- (69) In terms of ability to foreclose, Fudura's market share of [20-30]% does not give Fudura significant market power in the upstream market such that it would be able to significantly influence the conditions of competition. Fudura faces a number of significant competitors who provide heat metering services for large capacity connections, with market shares similar or smaller to that of Fudura, such as Kenter ([20-30]%), Inmax ([20-30]%), Anexo ([10-20]%) or TUMS ([20-30]%).⁶⁵ Therefore, under a hypothetical scenario where Fudura would decide to limit or stop supplying district heating companies other than Ennatuurlijk, these companies would most likely continue to have access to heat metering services for large capacity connections by several competing suppliers. In addition, Fudura's heat metering services are not a critical component since Ennatuurlijk's competitors could in theory decide to offer heat metering services as an integrated service also for large

by third parties are large capacity connections, with the exception of a number of older meters with legacy contracts [...]. The Notifying Parties confirm that metering services in relation to all other and all new small capacity connections are offered by Ennatuurlijk. Therefore, the addressable market for the provision of heat metering services to customers of Ennatuurlijk with large capacity connections above 100kW is minimal and the Commission considers that even if the Parties would have the ability and the incentive to tie or bundle the provision of heat metering services along with the generation and supply of district heating, the effect on competition would be very limited (Form CO, paragraph 136).

⁶³ Form CO, Table 7.

⁶⁴ Form CO, Table 7.

⁶⁵ Form CO, paragraph 152.

capacity connections since sophisticated metering capability is increasingly part of the meter supplied by meter manufacturers.⁶⁶ In turn, a customer of Ennatuurlijk's competitors could decide to purchase a heat meter directly from a supplier of district heating.

- (70) The Commission therefore considers that, post-Transaction, the Parties are unlikely to have the ability to engage in an input foreclosure strategy in the Netherlands.
- (71) In terms of incentives, the Commission notes that PGGM and DIF will jointly control Fudura and indicate that they do not intend having an exclusive supply-purchase relationship between Fudura and Ennatuurlijk post-Transaction. Furthermore, an input foreclosure strategy would be contrary to the interests of DIF and of its fiduciary obligations in relation to its investors since any strategy that would benefit Ennatuurlijk would only benefit PGGM and not DIF. Moreover, notwithstanding the fact that Fudura provides heat metering services for large capacity connections, [...]. Indeed, Fudura generates only EUR [...] million in revenue from heat metering services, which is a negligible activity to Fudura.⁶⁷
- (72) In any event, the cost factor of heat metering services as part of the overall district heating services provided to large capacity connections amounts to only [10-20]%. Therefore and because district heating services can be offered without offering heat metering services, the standalone metering services provided by Fudura may in addition not qualify as a critical component without which Ennatuurlijk could not offer district heating.⁶⁸
- (73) Therefore, the Commission considers that it is unlikely that the Parties would have any incentive to engage in an input foreclosure strategy post-Transaction.
- (74) Based on the above considerations and all evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in terms of input foreclosure.

5.2.3.1.2. Customer foreclosure

- (75) In terms of ability to foreclose customers, even though Ennatuurlijk has a monopoly regarding its own district heating areas, the relevant procurement market for heat metering services is broader than just Ennatuurlijk's districts and includes all of the Netherlands. The Netherlands has around 18 major heating districts and about 500 smaller heating districts. Ennatuurlijk offers district heating in 40 municipalities covering approximately 80 heating districts. On a national basis, Ennatuurlijk covers [10-20]% of all district heating (based on the number of connections, which includes both small and large capacity connections). When looking specifically at the procurement market for heat metering services for large capacity connections only, Ennatuurlijk's share of demand would be approximately [20-30]%.⁶⁹

⁶⁶ Form CO, paragraph 157.

⁶⁷ Form CO, paragraph 160.

⁶⁸ Non-Horizontal Merger Guidelines, paragraph 34.

⁶⁹ Form CO, paragraph 160(1).

- (76) Based on the above considerations and all evidence available to it, the Commission considers that it is unlikely that the Parties would have any ability to engage in a customer foreclosure strategy post-Transaction.
- (77) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in terms of customer foreclosure.

5.2.3.1.3. Conclusion

- (78) In view of the above, the Commission considers that the Transaction does not raise vertical concerns with regards to heat metering services.

5.2.3.2. Gas and electricity metering services (upstream) and district heating services (downstream)

- (79) The Transaction gives rise to a vertical link between Fudura's upstream provision of gas and electricity metering services in the Netherlands and Ennatuurlijk's downstream provision of district heating in the Netherlands. The gas and electricity metering services that Ennatuurlijk procures from Fudura are used to perform checks on energy installations and are not intended to be further sold to, or used by, third parties.
- (80) In this Section, the Commission assesses whether the Transaction would result in input foreclosure of Enaturlijk's district heating competitors and/or customer foreclosure of Fudura's gas and electricity metering competitors in the Netherlands. For the reasons detailed below, the Commission finds that the Parties will not have the ability to engage in input or customer foreclosure strategies.
- (81) Table 3 below provides an overview of the market shares of Fudura and its competitors in the provision of gas and electricity metering services for large capacity connections in the Netherlands between 2019 and 2021, as submitted by the Notifying Parties.

Table 3: Market Shares in the provision of heat metering services for large capacity connections*

Operator	Gas and electricity metering services to large capacity connections (the Netherlands, average between 2019-2021)	
	EUR million	Market Share
Fudura	[...]	[30-40]%
Kenter	[...]	[20-30]%
Joulz	[...]	[10-20]%
Inmax	[...]	[5-10]%
Anexo	[...]	[5-10]%
TUMS	[...]	[5-10]%
Others	[...]	[0-5]%
Total	[...]	100%

Source: Form CO⁷⁰

- (82) As regards input foreclosure, on a market for gas and electricity metering services limited to large capacity connections in the Netherlands, Fudura holds a moderate market share of [30-40]%.⁷¹ Furthermore, Fudura faces a number of strong competitors on this market, such as Kenter ([20-30]%), Joulz ([10-20]%), Anexo ([5-10]%), INNAX ([5-10]%) or TUMS ([5-10]%). Kenter and Joulz have consistently held strong market positions over the past years. Under a hypothetical scenario where Fudura would decide to limit or stop supplying district heating companies other than Ennatuurlijk, these companies would most likely continue to have access to gas and electricity metering services by several competing suppliers. Therefore, post-Transaction, the Parties are unlikely to have the ability to engage in an input foreclosure strategy. There is no need to assess the incentive to foreclose or overall impact of such strategy in light of the first condition not being fulfilled.
- (83) As regards customer foreclosure, the gas and electricity metering services that Ennatuurlijk procures from Fudura are used to perform checks on energy installations. Unlike heat metering services, these services are therefore for Ennatuurlijk's own limited captive use and are not intended to be further sold to, or used by, third parties. There is therefore virtually no possibility for Fudura to increase sales to Ennatuurlijk since Fudura's services already cover Ennatuurlijk's needs for its heating generation facility. In addition, Ennatuurlijk is not a big enough customer for Fudura to rely on supplying to Ennatuurlijk only, due to the negligible procurement share of Ennatuurlijk which relates only to Ennatuurlijk's own limited captive use.⁷² Therefore, it would be impossible for Ennatuurlijk to engage in a conduct with Fudura which would lead to customers being foreclosed or harmed. Therefore, post-Transaction, the Parties are unlikely to have the ability to engage in a customer foreclosure strategy. There is no need to assess the incentive to foreclose or overall impact of such strategy in light of the first condition not being fulfilled.
- (84) Based on the above considerations and all evidence available to it, the Commission concludes that an input or customer foreclosure strategy by the Parties post-Transaction is unlikely.
- (85) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regards to the vertical links between gas and electricity metering services and district heating.

5.2.3.3. Electrical engineering services on substations (upstream) and district heating services (downstream)

- (86) The Transaction gives rise to a vertical link between Fudura's upstream provision of electrical engineering services on substations, by reference to non-residential

⁷⁰ Form CO, Table 8.

⁷¹ Form CO, paragraph 167: on the broader relevant product market including small capacity connections, the Notifying Parties have confirmed that the market share of Fudura would be much lower.

⁷² Form CO, paragraph 169.

* As explained in Recital 81, the market shares provided in Table 3 relate to the provision of gas and electricity metering services to large capacity connections in the Netherlands instead of the provision of heat metering services that is indicated in the title of Table 3.

business active in the infrastructure sector in the Netherlands and Ennatuurlijk's downstream provision of district heating in the Netherlands. In this context, Ennatuurlijk rents substations and sources related installation and maintenance services from Fudura for its generation of heating.

- (87) In this Section, the Commission assesses whether the Transaction would result in input foreclosure of Ennatuurlijk's district heating competitors and/or customer foreclosure of Fudura's electrical engineering competitors in the Netherlands. For the reasons detailed below, the Commission finds that the Parties will not have the ability to engage in either input or customer foreclosure strategies.
- (88) Table 4 below provides an overview of the market shares of Fudura and its competitors in the provision of electrical engineering services on substations to non-residential customers active in the infrastructure sector in the Netherlands in 2021, as submitted by the Notifying Parties.

Table 4: Market Shares in the provision of electrical engineering services on substations for non-residential customers active in the infrastructure sector, including leasing/renting substations and installation and maintenance services

Operator	Electrical engineering services on substations (the Netherlands, 2021)
	Market Share
Fudura	[20-30]%
Kenter	[20-30]%
Joulz	[10-20]%
Others	[30-40]%
Total	100%

Source: Response of the Parties to Request For Information⁷³

- (89) As indicated in Table 4 above, on the market for electrical engineering services on substations for non-residential customers, including leasing/renting of substations as well as installation and maintenance services to customers active in the infrastructure sector in the Netherlands, Fudura in 2021 held a moderate market share of [20-30]%.⁷⁴ Similarly, in the wider market for the provision of electrical engineering services on substations for non-residential customers, including leasing/renting of substations as well as installation and maintenance services for all sectors (i.e. infrastructure, tertiary, and industrial) in the Netherlands, Fudura also held a moderate market share of [20-30]% in 2020.⁷⁵ Finally, in the overall market for

⁷³ Response of the Parties to question 1 of Request for Information I-3 of 1 August 2022, Table 1.

⁷⁴ Response of the Parties to question 1 of Request for Information I-3 of 1 August 2022, paragraph 1.2: Fudura estimates that its market share in the hypothetical infrastructure segment is lower ([20-30]%) compared to its share in the wider market for electrical engineering services on substations for non-residential customers, including leasing/renting of substations as well as installation and maintenance services for all sectors (i.e. infrastructure, tertiary, industrial) in the Netherlands ([20-30]%). This is based on the consideration that Fudura [...] This further explains Fudura's lower market share within the overall (heat) infrastructure segment.

⁷⁵ Form CO, Table 9.

electrical engineering services, Fudura's market share is limited to [0-5]% (overall sales of EUR [...] million in 2020) in the Netherlands.⁷⁶

- (90) In terms of input foreclosure, on a market for electrical engineering services on substations for customers active in the infrastructure sector in the Netherlands, Fudura is only one of many strong competitors, including Kenter ([20-30]%), Joulz ([10-20]%) and others ([30-40]% combined), all of which also offer an integrated solution comprising both (i) the renting/leasing of substations and (ii) installation and maintenance services. Fudura also cannot increase the sale of such integrated solutions for substations by serving only Ennatuurlijk. This would require a material expansion of Ennatuurlijk's supply, given that Ennatuurlijk only procures the substations to run its heat generating facilities. Ennatuurlijk's total spend on substations and related services amounts to EUR [...], which represents less than [0-5]% of Fudura's activities in the provision of electrical engineering services on substations.
- (91) Therefore, post-Transaction, the Parties are unlikely to have the ability to engage in an input foreclosure strategy. There is no need to assess the incentive to foreclose or overall impact of such strategy in light of the first condition not being fulfilled.
- (92) In terms of customer foreclosure, Ennatuurlijk already rents all of its substations and sources all of its related installation and maintenance services from Fudura. Therefore, no competitor of Fudura would be foreclosed in a hypothetical scenario where Ennatuurlijk would exclusively purchase from Fudura. In any event, [80-90]% of the district heating connections in the Netherlands is supplied by other companies than Ennatuurlijk. These other companies also require substations and related services. In addition, substations and transformers are also procured by companies active in other sectors, such as the gas or electricity sectors.
- (93) Therefore, post-Transaction, the Parties are unlikely to have the ability to engage in a customer foreclosure strategy. There is no need to assess the incentive to foreclose or the overall impact of such a strategy in light of the first condition not being fulfilled.
- (94) Based on the above considerations and all evidence available to it, the Commission concludes that an input or customer foreclosure strategy by the Parties post-Transaction is unlikely.
- (95) Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regards the vertical links between electrical engineering services and district heating.

⁷⁶ Response of the Parties to question 1(a) Request for Information I-1 of 28 July 2022: some suppliers not included in the market share calculations and not included in the competitive assessment, such as OEM manufacturers that manufacture substations, may also sell substations to end customers. If sales of substations would be included, the total market size would materially increase and the market share of Fudura and its competitors identified in Table 4 would materially decrease. The Commission considers that it is not relevant to further consider the vertical link based on a market that includes other suppliers that sell substations, as (i) Ennatuurlijk does not purchase substations, but only rents them, including procuring installation and maintenance services, and (ii) the market share of Fudura would materially decrease.

6. CONCLUSION

- (96) 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