



EUROPEAN COMMISSION
DG Competition

Case M.11233 - OMERS / ABP / KENTER

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/2023

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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The Netherlands

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1043 AP Amsterdam
The Netherlands

**Subject: Case M.11233 - OMERS / ABP / KENTER -
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 17 November 2023, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which OMERS Infrastructure European Holdings 2 B.V. (“OMERS”, Netherlands) and Stichting Pensioenfonds ABP (“ABP”, Netherlands), through its solely controlled subsidiary, APG Asset Management N.V (“APG”, Netherlands), will acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of

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’).

Kenter B.V. (“Kenter”, Netherlands) by way of purchase of shares from Alliander N.V.³. OMERS and ABP are designated hereinafter as the “Parties”.

1. THE PARTIES

- (2) **OMERS** is the European infrastructure investment platform for OMERS Administration Corporation which is the administrator of the Ontario Municipal Employees Retirement System Primary Pension Plan.
- (3) **ABP** is a Dutch pension fund for the governmental and educational sector in the Netherlands. Its subsidiary APG manages the assets of ABP with a total value of approximately [...]euros (as of April 2023).
- (4) OMERS and ABP acquired joint control over Groendus Groep B.V. (“Groendus”) in 2022. Groendus is an energy transition platform in the Netherlands established in 2021. Groendus provides electricity and gas metering services as well as installation and maintenance of solar panels, EV charging infrastructure and battery storage solutions.
- (5) **Kenter** is active mainly in the Netherlands where it supplies gas and electricity metering services as well as installation and maintenance of mid-voltage installations, battery storage solutions and EV charging infrastructure. Kenter is currently wholly-owned by Alliander N.V..

2. THE CONCENTRATION

- (6) On 27 June 2023, OMERS and ABP have concluded a protocol including the share purchase agreement (SPA) pursuant to which they will acquire joint control over Kenter through a special purpose vehicle. The Parties plan to implement the Proposed Transaction in two phases. In the first phase, the Parties will acquire 100% of the shares of Kenter through a special purpose vehicle (“SPV”). In the second phase, the operating businesses of Kenter and Groendus will be merged into one operating company (or a fully integrated group of companies).
- (7) Post-Transaction, ABP and OMERS will indirectly hold each 50% of Kenter shares and voting rights,⁴ leading to a typical situation of joint control.⁵
- (8) 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

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (OMERS: EUR [...], ABP: EUR [...], Kenter: EUR [...])⁶. Each of at least two of the undertakings concerned has a Union-wide turnover in excess of EUR 250 million (OMERS: EUR [...], ABP: EUR [...],

³ Publication in the Official Journal of the European Union, OJ C, C/2023/1220, 27.11.2023.

⁴ It is envisaged that the Parties will conclude a Shareholders Agreements that should provide that the Parties will have equal voting rights in [...], notably in [...]. Furthermore, in case of deadlock, [...]. If no agreement can be reached, the status quo will prevail.

⁵ Consolidated Jurisdictional Notice, para. 64.

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation.

Kenter: EUR [...]), but not all of them 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 DEFINITIONS

4.1. Introduction

- (10) Metering relates to the measurement of consumed electricity, gas, water or heat, for the purposes of invoicing and providing transparency/optimisation of consumption.⁷
- (11) Kenter and Groendus are both active in metering and sub-metering in the Netherlands.
- (12) In the Netherlands, the Electricity Act and the Gas Act make a distinction between small customers and large customers. Small customers are defined as those with an electricity connection of 3*80 A maximum and for gas connections, with a capacity of 40m³/hour maximum. For small customers, the grid operator is obliged to install, maintain, operate the meters and to collect the metering data.⁸ For large customers,⁹ the grid operator is not responsible for the metering and large customers can choose their supplier of metering services among those certified as “metering responsible party” by TenneT TSO B.V..¹⁰
- (13) The Transaction gives rise to other horizontal overlaps such as the markets for the retail supply of private EV charging stations and the market for industrial energy storage solutions as well as to a potential vertical link between Kenter’s upstream activities on the market for electrical engineering services in the Netherlands and Groendus’ downstream activities on the market for the production and wholesale of electricity. However, none of these horizontal overlaps or vertical link lead to any affected market as a result of the application of the Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004.¹¹ They will not be discussed further in this decision.

⁷ Case M.8870 – *E.ON/Innogy*, paragraph 148.

⁸ Article 16 and 26ab of the Electricity Act and Article 10 and 13b of the Gas Act. Reply to question 3 of RFI 7 and to question 8 of RFI 8.

⁹ Large customers are defined as customers with an electricity connection capacity exceeding 3*80A or a gas connection exceeding 40m³/hour. Large customers also comprise “A1-customers” which are companies with small connections but active in public transport, mining activities, telecommunications, public lighting, water management and drinking water. Under Article 1 sub 2 of the Electricity Act they are excluded from the definition of small customers. Reply to question 3 of RFI 7.

¹⁰ Form CO, paragraph 72-74.

¹¹ OJ C 160, 5.5.2023, p. 1–10, paragraph 5.

4.2. Product market definition

The Commission's decisional practice

- (14) In its past decisional practice, the Commission distinguished a product market for metering services.¹²
- (15) 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 operator ('cMPO');¹³ (ii) heat and water; (iii) sub-metering services;¹⁴ and (iv) white label services.¹⁵
- (16) In *PGGM/DIF/Fudura*, relating to the Dutch metering market, the Commission assessed the effects of the Transaction on the market for gas and electricity metering services for large customers.¹⁶ The distinction made in *E.ON/Innogy* between eMPO/nMPO/cMPO was deemed not relevant for the Netherlands as these concepts were specific to the German market.¹⁷
- (17) 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.¹⁸ 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.¹⁹

The Parties' views

- (18) The Parties submit that the Transaction should be analysed on the market for gas and electricity metering services to large customers, comprising electricity, gas, gross production and A1-meters.²⁰
- (19) They submit that it is not appropriate to segment the Dutch market for gas and electricity metering services between (i) installation and operation of electricity

¹² Cases M.10719 – *PGGM/DIF/Fudura*, paragraphs 19 f.; M.8870 – *E.ON/Innogy*, paragraphs 148-171; M.3874 – *CVC/RuhrGas Industries*, paragraphs 17 and 19; M.2890 – *EDF/Seaboard*, paragraphs 25 f.; M.1949 – *Western Power Distribution/Hyder*, paragraphs 15-16.

¹³ For more information, see Case M.8870 – *E.ON/Innogy*, paragraph 151.

¹⁴ Case M.8870 – *E.ON/Innogy*, 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.

¹⁵ Case M.8870 – *E.ON/Innogy*, paragraph 154: white label services are services such as e.g. procurement, installation, operation, maintenance and the provision of IT solutions, which are provided to MPOs.

¹⁶ Case M.10719 – *PGGM/DIF/Fudura*, paragraph 32.

¹⁷ Case M.10719 – *PGGM/DIF/Fudura*, footnote 20.

¹⁸ Decision of the Dutch Competition Authority in Case 6015/83 – *Essent N.V./Nuon N.V.*, paragraph 75.

¹⁹ Decision of the Dutch Competition Authority in Case 6015/83 – *Essent N.V./Nuon N.V.*, paragraph 73-75.

²⁰ Form CO, paragraph 86.

meters and (ii) meter reading and associated data processing activities. According to the Gas and Electricity Codes (“the Metering Codes”), metering responsible parties must provide both (i) the installation and operation of electricity meters and (ii) meter reading and associated data processing services.²¹ The Parties furthermore indicate that these services are provided together for a customer and that it is not common that the above-mentioned services are provided separately.²²

- (20) The Parties moreover take the view that the segmentation on the gas and electricity metering market considered by the Commission in the *E.ON/Innogy* decision between eMPO, nMPO and cMPO is not relevant for the Dutch market as this segmentation was specific to Germany.
- (21) With regard to a possible segment for sub-metering services, the Parties do not consider it relevant to distinguish such segment as all major metering companies offer sub-metering services in addition to their metering services and customers usually source gas and/or electricity meters and sub-meters together. The Parties submit that this question can however be left open as competition concerns can as well be ruled out on a separate segment for sub-metering services.²³
- (22) Finally, the Parties submit that the distinctions considered by the Commission in *E.ON/Innogy* regarding (i) heat and water metering services and (ii) white label services, can be left open in the present case as the transaction does not lead to an overlap between the Parties’ activities on these segments.²⁴

The Commission’s assessment

- (23) The results of the market investigation largely confirmed the Commission’s past practice with regard to the market definition for metering services.
- (24) The majority of customers and competitors expressing a view confirmed that there is a distinct market for gas and electricity metering services to large customers.²⁵ The results of the market investigation further confirmed that it is not relevant to distinguish between meter services for electricity, gas, gross production and A1-meters.²⁶

²¹ The Parties cite Article 1.2.3.1 of the Gas Metering Code and Article 1.2.3.2 of the Electricity Metering Code, according to which “*for each large-scale consumption connection there is one metering party responsible for all the activities arising from chapters 4, 5 and 6.*”. Chapter 4 of the Metering Codes describes the technical requirements that must be fulfilled by metering companies and Chapter 5 of the Metering Codes sets the requirements for meter reading and associated data processing services the metering responsible party must meet.

²² Form CO, paragraphs 81-84.

²³ Form CO, paragraphs 116-120. Kenter provides both electricity and gas sub-meters, whereas Groendus only supplies electricity sub-meters. The possible segment for sub-metering services would therefore only encompass electricity sub-meters, as there is no overlap on the market for gas sub-meters.

²⁴ Form CO, paragraph 115 and 124: There is no overlap between Groendus and Kenter on the market for heat or water metering services as Groendus is not active on this sub-segment. Groendus is further not active on the market for white-label services, which means that there is no overlap on this sub-segment as well.

²⁵ Non-confidential version of the responses to question B.1 of the eRFI to Customers and to question B.1 of the eRFI to Competitors.

²⁶ All responding metering services suppliers confirmed that they supply electricity, gas, gross production and A1-meters. Non-confidential version of the responses to question B.5 of the eRFI to Competitors.

- (25) Moreover, the market investigation confirmed that a distinction between (i) installation and operation of electricity meters and (ii) meter reading and associated data processing services is not appropriate.²⁷ The results of the market investigation however suggest that there could be a distinct market for the assessment and interpretation of metering data, for example, in order to suggest measures to reduce energy consumption: while all responding competitors indicated that they provide such services,²⁸ only a minority of customers source these services from their metering services suppliers. The majority of responding customers assess and interpret the metering data in-house and a small minority of customers rely on another supplier than its metering supplier.²⁹ For the purpose of this Decision, the question can however be left open as the Transaction does not lead to an overlap on the possible segment for the assessment and interpretation of metering data with a specific objective.³⁰
- (26) Concerning the possible segment for sub-metering activities, the majority of responding customers and competitors to the market investigation consider that sub-meters and main meters belong to the same market.³¹ One competitor noted that “*meters and sub-meters both serve the same underlying customer demand for insights on energy consumption*”.³² The large majority of customers source sub-meters from the same suppliers than main meters.³³ In any case, the question can be left open, as it does not affect the Commission’s conclusions regarding the compatibility of the Transaction with the internal market.
- (27) Last, with regard to the distinctions between eMPO/nMPO/cMPO, the Commission, in line with the *PGGM/DIF/Fudura* decision, considers that these concepts are specific to the German market and thus not relevant for the purpose of the present decision.
- (28) In conclusion, the Commission considers that the exact market definition can be left open as it does not affect the Commission’s conclusions regarding the compatibility of the Transaction with the internal market. It will assess the effects of the Transaction on the overall market for electricity and gas metering services to large customers (including both main meters and sub-meters) and will also assess the possible segments for the provision of electricity and gas main metering services, on the one hand and the provision of electricity and gas sub-metering services, on the other hand.

²⁷ All replying competitors and customers confirmed that they supply/source together the (i) installation and operation of electricity meters and (ii) meter reading and associated data processing activities. Non-confidential version of the responses to question B.11 of the eRFI to Customers and to question B.7 of the eRFI to Competitors.

²⁸ Non-confidential version of the responses to question B.8 of the eRFI to Competitors.

²⁹ Non-confidential version of the responses to questions B.12 and B.13 of the eRFI to Customers.

³⁰ The Parties submit that Groendus is not active on a possible market for the assessment and interpretation of metering data. Moreover, Kenter is currently part of the same group than Liander, which is a Distribution System Operator (“DSO”). On the basis of Article 17c of the Electricity Act and Article 10d of the Gas Act, group companies of grid operators are restricted in the activities they can carry out and Kenter is therefore not allowed to provide energy advice or advice on energy consumption. As a result, the Parties’ activities do not overlap on the possible market for assessment and interpretation of metering data. Reply to question 1 of RFI 7.

³¹ Non-confidential version of the responses to question B.6 of the eRFI to Customers and to question B.10 of the eRFI to Competitors.

³² Non-confidential version of the minutes with one competitor, dated 27 October 2023.

³³ Non-confidential version of the responses to question B.9 of the eRFI to Customers.

4.3. Geographic market definition

The Commission's decisional practice

- (29) In previous cases, notably concerning the Dutch market, the Commission considered the market for gas and electricity metering services to be national in scope.³⁴ The Dutch Competition Authority also considered the market for metering services to large customers to be national.³⁵

The Parties' views

- (30) The Parties submit that the market for gas and electricity metering services is national in scope.³⁶

The Commission's assessment

- (31) The Commission notes that both Parties are only active in the Netherlands in relation with the provision of metering services.
- (32) In addition, during the market investigation, the majority of competitors and customers considered the market for metering services to be national. A minority of customers expressed that the market could be wider than national.³⁷
- (33) As a result, the Commission considers the relevant market to be national and will analyse the effects of the Transaction on the Dutch market.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework of horizontal effects

- (34) 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.
- (35) 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. Horizontal effects may be non-coordinated or coordinated.³⁸
- (36) 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

³⁴ Cases M.10719 – PGGM/DIF/Fudura, paragraphs 31-32; M.8870 – E.ON/Innogy, paragraphs 174-177.

³⁵ Decision of the Dutch Competition Authority in Case 6015/83 – Essent N.V./Nuon N.V., paragraphs 123-125.

³⁶ Form CO, paragraphs 87-88.

³⁷ Non-confidential version of the responses to questions C.1-C.2 of the eRFI to Customers and to question C.1 of the eRFI to Competitors.

³⁸ 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.

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.

5.2. Assessment

- (37) 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 electricity and gas metering services to large customers in the Netherlands, as well as on its potential segments.
- (38) For the reasons detailed below, the Commission considers that the Transaction does not give rise to serious doubts regarding its compatibility with the internal market as a result of the horizontal overlap in the market for the provision of electricity and gas metering services to large customers in the Netherlands, including on its potential segments.³⁹
- (39) The Parties both offer electricity and gas metering services in the Netherlands including main meters, and sub-meters. Unless stated otherwise, the competitive assessment will group together the overall market and its subsegments as the main considerations are usually identical.

5.2.1. Market shares

- (40) First, based on the data provided by the Parties,⁴⁰ their combined market shares in 2022 would be between [30-40]% in value and [30-40]% in volume, with an increment between [5-10]% in value and [5-10]% in volume. Over the last three years, Kenter's market share in value decreased by almost [0-5]%, while Groendus' market share remained stable (+[0-5]%). In volume, Kenter's market share remained stable (+[0-5]%) whereas Groendus' increased (+[0-5]%). As a result, over the last three years, the combined market share in value decreased by [0-5]% whereas it increased in volume by [0-5]%.

Table 1: Market shares in the provision of electricity and gas metering services to large customers

Company	2020		2021		2022	
	Value	Volume	Value	Volume	Value	Volume
Kenter	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Groendus	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Combined	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%

Source: Form CO, Tables 7 and 8

- (41) The Parties' market shares would be very similar on a potential segment for the provision of main meters.

³⁹ As the Parties offer also other products, the Commission has considered whether it would be possible for them to engage in bundling strategies. However, it appears that the majority of the customers that expressed a view do not source other energy related services (such as transformers, solar panels or EV charging stations) together with metering services (Non-confidential version of the responses to question D.12 of the eRFI to Customers). In addition, customers have specific needs making any bundling strategy very difficult.

⁴⁰ For the total size of the markets, the Commission retains the most conservative assumptions.

Table 2: Market shares for the provision of electricity and gas main metering services to large customers

Company	2020		2021		2022	
	Value	Volume	Value	Volume	Value	Volume
Kenter	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Groendus	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
<i>Combined</i>	[40-50]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%

Source: Form CO, Tables 9 and 10

- (42) The Parties' market shares would be smaller on a potential segment for the provision of sub-meters, that represents less than [5-10]% of the total market. The Parties' combined market share would be lower, around [20-30]% (value) and [10-20]% (volume), with a limited increment of around [0-5]%. This can be explained by the fact that there is no authorization required to provide sub-metering services and therefore there are additional players than can offer these services such as manufacturers of meters (ABB, Kamstrup) or installation companies (Spie, Equans or Batenburg).

Table 3: Market shares for the provision of electricity and gas sub-metering services to large customers

Company	2020		2021		2022	
	Value	Volume	Value	Volume	Value	Volume
Kenter	[5-10]%	[5-10]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
Groendus	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<i>Combined</i>	[10-20]%	[5-10]%	[30-40]%	[20-30]%	[20-30]%	[10-20]%

Source: Form CO, tables 2 and 3

5.2.2. The Parties' views

- (43) The Parties consider that the Proposed Transaction does not result in a significant impediment to effective competition on the market for the provision of electricity and gas metering services to large customers in the Netherlands, including on its potential segments. They submit that (i) the combined market position of the Parties remains moderate, (ii) the market is highly competitive with many (strong) competitors active in the market, (iii) the barriers to entry are low and (iv) the switching costs for customers are relatively low resulting in substantial customer switching.⁴¹

5.2.3. The Commission's assessment

- (44) **First**, on the overall market and on the segment for main meters, the new entity will continue to face competition from seven competitors, including two major competitors: Fudura (with a market share of approx. [30-40]%), Joulz (approx. [10-20]%) as well as smaller competitors such as Innax ([5-10]%), Anexo ([0-5]%), or Tums ([0-5]%).⁴² Smaller players can offer competitive prices for electricity and gas metering services notably thanks to different business models,

⁴¹ Form CO, para 148 f.

⁴² Response to RFI 6. The market shares are based on the estimates indicated in a third-party report submitted by the Parties and usually contain the middle number of the estimates.

such as low-cost solutions or a different focus. On the potential segment for the provision of sub-metering services, the market shares of the main competitors are similar to Kenter's (approx. [10-20]%). There are also a number of smaller players such as Censo, Anexo or Innax (with market shares of approx. [0-5]% each) and a very large fringe (representing more than [40-50]% of the market), the absence of regulation of this activity attracting a large number of smaller players.⁴³

- (45) Metering services can be sourced by large customers both with and without tenders. In practice, only the minority of meters are sold via tenders.⁴⁴ Even though they represent a limited part of the Parties' activities (around [...]% of Groendus' customer base in 2022 and [...]% for Kenter), the Commission verified that there were enough competitors for the customers organizing tenders. In this respect, it appears from the data communicated by the Parties that [the Parties tendering strategy].⁴⁵ Moreover, all customers that expressed a view consider that there are enough competitors,⁴⁶ including in the context of tenders. One customer explained that it expects between three and five competitors to respond to its tender.⁴⁷
- (46) **Second**, the Commission considers that the Parties are not particularly close competitors for the following reasons:
- (a) Kenter is a much larger player with a market share many times bigger than Groendus' on the overall market as well as the potential segments.
 - (b) Kenter is, together with Joulz and Fudura, one of the historical players, born from a spin-off from a distribution system operator ('DSO'), Liander that has progressively diversified its activity from metering to other energy-related services.⁴⁸ Kenter is a more mature player with historically a significant footprint in the geographic area where the DSO, Liander, belonging to the same group as Kenter, is active. On the contrary, Groendus is one of the recent entrants in the market. Today, both parties are active in the entire territory.⁴⁹
 - (c) The Parties do not have the exact same product portfolio. In this respect, one competitor explained that Groendus' client portfolio is more differentiated than the portfolio of the historical players such as Kenter or Joulz and offers broader energy services, including for instance weather forecasts or day-ahead tariffs.⁵⁰ Contrary to Kenter that is a spin-off from a DSO, Groendus is the result of the merger of a number of smaller companies specialized in various energy-related activities such as solar panels.⁵¹
 - (d) The Parties do not target the exact same customers. In this respect, one customer explained that Groendus is targeting smaller businesses while

⁴³ Reply to question 2 of RFI 9.

⁴⁴ All responding competitors indicated that tenders only represent up to 10-20% of metering services sales. Non-confidential version of the responses to question D.9 of the eRFI to Competitors.

⁴⁵ Kenter and Groendus competed against each other in [...] tenders in 2022, out of 15 organized that year. Reply to question 10 of RFI 8 and Form CO, paragraph 188.

⁴⁶ Non-confidential version of the responses to question D.5 of the eRFI to Customers.

⁴⁷ Non-confidential version of the minutes with one customer, dated 26 October 2023.

⁴⁸ Non-confidential version of the minutes with one competitor, dated 19 October 2023.

⁴⁹ Reply to question 1 of RFI 9.

⁵⁰ Non-confidential version of the minutes with one competitor, dated 19 October 2023.

⁵¹ Non-confidential version of the minutes with one competitor, dated 19 October 2023. See also response to question 2 of RFI 8.

Kenter provides services to a broader target audience.⁵² The Parties also explain that Groendus targets customers that are looking to outsource solar production of electricity and energy optimisation – activities Kenter cannot currently offer – whereas Kenter’s customer base is rather focused on customers requiring infrastructural assets.⁵³

- (e) Based on the data communicated by the Parties for 2022⁵⁴ and on the responses from the market investigation,⁵⁵ the Parties did not compete frequently on tenders. Out of the tenders in which Kenter and Groendus participated in 2022 ([...] tenders for Kenter and [...] for Groendus), the Parties competed against each other only in [0-5] tenders – out of which they each lost [...] to each other and [...] to another competitor.⁵⁶

(47) **Third**, the Commission notes that none of the competitors or customers raised concerns during the market investigation, as regards the impact of the Transaction on competition.

- (a) None of the customers that responded to the market investigation raised concerns. All customers that expressed an opinion consider that there are enough players in the market.⁵⁷ One customer explained that it *“is not worried about the Proposed Transaction. It considers that there are sufficient suppliers of meters on the market and expects between 3 and 5 suppliers to reply to its upcoming tender”*.⁵⁸ One other highlighted that *“In my view there is enough competition in the market, so I don't expect a big impact”*.⁵⁹ Another insisted on the fact that in the Netherlands, prices offered by metering services suppliers were competitive as there are enough competitors: *“there is a sufficient number of metering companies available in the Dutch Market to ensure price competitiveness”*.⁶⁰ One customer even noted that the Transaction will have a positive effect: *“To offer good quality metering devices, investment is required for further development. That’s why I think this acquisition will have a positive effect.”*⁶¹
- (b) Several competitors also consider the market to be competitive and that the Transaction will not change the market dynamics.⁶² In this respect, one competitor explained that *“post-Transaction, [...] the market will remain very competitive with 3 main players and other smaller players.”*⁶³ It added that competition has significantly driven the prices down over the last few years.⁶⁴ One competitor underlined that competition will further increase on the market as the *“Proposed Transaction will lead it to face a stronger competitor in the future on the metering market, which from a competitor’s perspective is not something positive. However, [it] considers that from a*

⁵² Non-confidential version of the responses to question E.2 of the eRFI to Customers.

⁵³ Reply to question 3 of RFI 8.

⁵⁴ Reply to question 10 of RFI 8.

⁵⁵ Non-confidential version of the responses to question D.6 of the eRFI to Customers.

⁵⁶ Reply to question 10 of RFI 8.

⁵⁷ Non-confidential version of the responses to question D.8 of the eRFI to Customers.

⁵⁸ Non-confidential version of the minutes with one customer, dated 26 October 2023.

⁵⁹ Non-confidential version of the responses to question E.2 of the eRFI to Customers.

⁶⁰ Non-confidential version of the responses to question E.2 of the eRFI to Customers.

⁶¹ Non-confidential version of the responses to question E.4 of the eRFI to Customers.

⁶² See for example: Non-confidential version of the minutes with one competitor, dated 27 October 2023.

⁶³ Non-confidential version of the minutes with one competitor, dated 18 October 2023.

⁶⁴ Non-confidential version of the minutes with one competitor, dated 18 October 2023.

customer's perspective the Proposed Transaction will be positive as it will increase the competition on the market.”⁶⁵ Another one submitted that “before the transaction there were six players in the metering market, after the transaction there will be four or five players, which is still sufficient”.⁶⁶

- (48) **Fourth**, the Parties submit that there are low barriers to entry on the market, in particular as TenneT's certification would be only a formality and the total cost of entry would be low.⁶⁷ In this respect, one competitor explained that *“similarly to the sub-meter market, there are no significant barriers to entry on the main meter market. It takes some time and capital to get the certification from the regulatory body (TenneT), however, any professional with some capital can get the certification. The difference in terms of requirements between main meters and sub-meters only lies in the fact that providers of main meters are required by law to supply the data within 24 hours to the regulatory body, making the operational process tighter. However, the underlying data process is similar between main meters and sub-meters”*.⁶⁸ In addition, the Commission understands that providers need to invest in, and maintain, IT systems to be able to keep up with customers' needs and new regulations. In this respect, it stems from the market investigation that non-negligible IT investments are requested but according to competitors, they do not seem to represent an *“insurmountable barrier to entry”*,⁶⁹ as these IT systems are *“off the shelf systems available and the legislation to be complied with is public”*.⁷⁰ Another competitor added that *“though these IT systems are increasingly important and costly to maintain and update, there are many service providers that offer these services and/or on-site assistance with such services”*.⁷¹ Barriers to entry on the sub-metering segment are lower as there is no authorization procedure. As a result, the Commission considers that the barriers to enter might not be as low as explained by the Parties but do not represent a critical element, especially in view of the fact that there is already a significant number of competitors active on the market.
- (49) **Fifth**, the Commission notes that the responses on the possibility to switch are rather mixed. Most competitors explained that switching costs are limited for the customers, acknowledging that the latter were not switching frequently as meters are a *“low interest product”* for them.⁷² Metering services represent usually less than 1% of the customers' energy costs.⁷³ The responses provided by the customers are more nuanced, some of them considering that switching is complicated by the fact the metering companies own the meters and switching involves the decommissioning of the old meters.⁷⁴ However, none of them raised any concern that the Transaction would make switching more complex, should the customers want to switch. On the contrary, all the customers that expressed a view considered that there are enough metering services providers⁷⁵ to ensure competitive prices.

⁶⁵ Non-confidential version of the minutes with one competitor, dated 19 October 2023.

⁶⁶ Non-confidential version of the minutes with one competitor, dated 24 October 2023.

⁶⁷ Form CO, para. 210.

⁶⁸ Non-confidential version of the minutes with one competitor, dated 27 October 2023.

⁶⁹ Non-confidential version of the responses to question D.2 of the eRFI to Competitors.

⁷⁰ Non-confidential version of the responses to question D.2 of the eRFI to Competitors.

⁷¹ Non-confidential version of the responses to question D.2 of the eRFI to Competitors.

⁷² Non-confidential version of the minutes with one competitor, dated 27 October 2023.

⁷³ Non-confidential version of the responses to question D.17 of the eRFI to Customers.

⁷⁴ Non-confidential version of the responses to question D.11 of the eRFI to Customers.

⁷⁵ Non-confidential version of the responses to question D.8 of the eRFI to Customers.

- (50) In view of the above elements, in particular the number and strength of the Parties' competitors, the absence of particular closeness and the absence of any concern raised during the market investigation, the Commission considers that the Transaction does not give rise to serious doubts regarding its compatibility with the internal market as a result of the horizontal overlap in the market for the provision of electricity and gas metering services to large customers in the Netherlands, including on its potential segments.

6. CONCLUSION

- (51) 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