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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.12202 - MARUBENI / FACTOR ENERGIA
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004 ([1]) and Article 57 of the Agreement on the European Economic Area ([2])

Dear Sir or Madam,

(1) On 19 January 2026, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Marubeni Corporation ('Marubeni', or the 'Notifying Party', Japan) will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Factor Energia S.A. ('Factor Energia' or 'the Target', Spain) by way of purchase of shares (the 'Transaction'). ([3]) Marubeni and Factor Energia are designated hereinafter as the 'Parties' to Transaction.

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.
([2]) OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').
([3]) OJ C, C/2026/551, 26.1.2026.

1. THE PARTIES

(2) Marubeni is a trading and investment company active worldwide with diverse business activities across wide-ranging fields. This includes lifestyle, IT solutions, food, agribusiness, forest products, chemicals, metals and mineral resources, energy, power, infrastructure project, aerospace and ship, finance, leasing and real estate business, construction, industrial machinery and mobility, next generation business development and next generation corporate development. In Portugal, Marubeni jointly controls Floene Energias, S.A. ('Floene') ([4]), which is primarily active in the distribution of medium and low-pressure gas (< 20 bar) in certain regions of Portugal. Floene is the Distribution System Operator ('DSO') of the following distribution networks: Lusitaniagas, Lisboagas, Setgas, Medigas, Duriensegas, Beiragas, Tagusgas, Dianagas, and Paxgas.

(3) Factor Energia is an energy supply and services company. Its core business is the retail supply of electricity and natural gas, complemented by representation of cogeneration and renewable generation plants, ([5]) and provision of energy-related services. In particular, Factor Energia is active as a retail supplier of natural gas in Portugal.

2. THE OPERATION

(4) Pursuant to a Share Purchase Agreement, signed on 19 December 2025, between SmartestEnergy Europe Limited ('SEEL', a newly incorporated company that is a wholly owned subsidiary of SmartestEnergy Limited, which is itself a wholly owned subsidiary of Marubeni), SmartestEnergy Limited, and Mr Emilio Rousaud Parés and Royal Lytham & St. Annes S.L.U. (an investment vehicle wholly owned by Mr Emilio Rousaud Parés), ([6]) Marubeni will acquire 85% of the shares in Factor Energia. The remaining 15% of Factor Energia (a non-controlling interest) will continue to be held by the seller (Royal Lytham & St Annes S.L.U.). Therefore, the Transaction is an acquisition of sole control under Article 3(1)(b) of the Merger Regulation by Marubeni of Factor Energia.

3. UNION DIMENSION

(5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million: Marubeni has a worldwide turnover of

([4]) The other joint controlling shareholders of Floene are Toho Gas Co., Ltd. and Allianz Capital Partners GmbH. Cf. decision in case M.10084 – ACP / Marubeni / Toho Gas / GGND.

([5]) Representation services are services provided to third-party electricity producers for sale in the wholesale market. These services include preparing and submitting day to day and intraday market offers based on production forecasts, verifying and selling delivered energy, billing generated energy and feed in tariffs, and providing operational, regulatory and fiscal guidance, as well as monitoring and telemetering reporting. Form CO, fn. 113.

([6]) Factor Energia is currently held by Royal Lytham & St. Annes S.L.U. (an investment vehicle wholly owned by Mr Emilio Rousaud Parés), JZ Power Services, BV (an investment vehicle wholly owned by JZ Fund III, LP, an investment fund managed by JZ Capital Partners Limited and JZ International Ltd) and OPB Private Equity (NS) Limited (a public-sector asset manager, associated with a Canadian pension fund). Prior to the closing of the Transaction, Royal Lytham & St. Annes S.L.U. will acquire JZ Power Services, BV and OPB Private Equity (NS) Limited's shares in Factor Energia pursuant to the exercise of a right of first offer or call option, in full agreement among the current shareholders. This agreement is interdependent with the acquisition of Factor Energia by SEEL. It is a temporary change of control which is transitory in nature.

EUR 76,651 million in the fiscal year ending in March 2025, and Factor Energia has a worldwide turnover of EUR[…] million in the fiscal year ending in December 2024. As Marubeni and Factor Energia do not achieve more than two-thirds of their EU-wide turnover within one and the same Member State, the Transaction has a Union dimension under Article 1(2) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Introduction to natural gas transport in Portugal

(6) Producers sell and supply natural gas to wholesale suppliers, which, in turn, supply it to retail suppliers. The latter supply natural gas to final customers. The physical transport of the natural gas volumes between these different market operators is done via transportation networks (also referred to simply as 'grids').

(7) The transportation of gas in Portugal involves two types of networks:

(a) The *transmission network*, which is used by importers or producers to transport natural gas on behalf of wholesale suppliers that aim to resell it either to other gas wholesalers, to distributors, or to large industrial customers that are directly connected to the gas transmission network. The transmission network is composed of mostly high-pressure pipelines and is operated by the Transmission System Operator ('TSO'), which in Portugal is REN Gasodutos ('REN'), a part of the REN group ('Redes Energéticas Nacionais'). ([7])

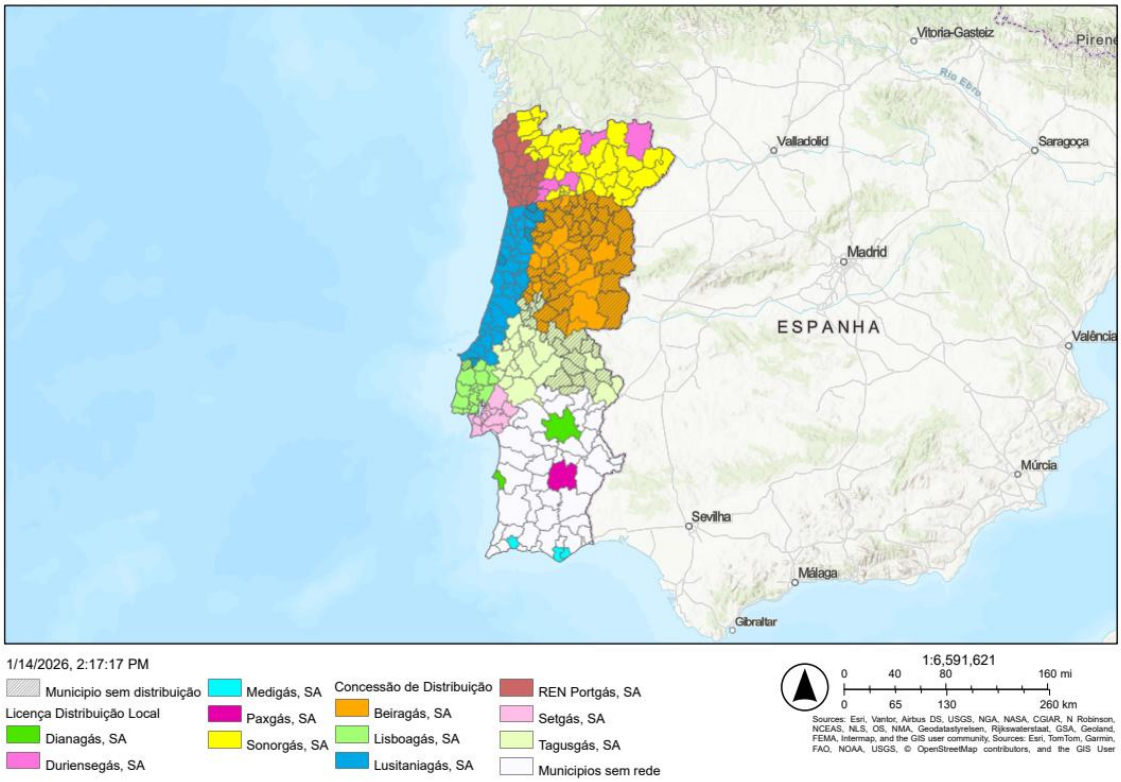
(b) The *distribution networks*, ([8]) which are used to deliver natural gas on behalf of retail suppliers to end customers. The distribution networks are composed of mostly medium pressure (between 20 and 4 bar) and low pressure (below 4 bar) pipelines and are operated by DSOs. In Portugal, there are three DSOs: Floene (jointly controlled by Marubeni), REN Portgás, and Sonorgás. Each distribution network covers a part of the Portuguese territory, not overlapping with each other. ([9])

([7]) Form CO, paragraph 6.3.1.

([8]) In Portugal there are two types of natural gas distribution systems: i) pipeline-based (interconnected) distribution networks, supplied via the national transmission system; and ii) LNG-based local distribution systems, supplied by LNG tanks delivered by road. This distinction is purely technical and does not correspond to different legal or regulatory categories of gas distribution. See Parties' response to question 1, RFI 2. The Commission will therefore not distinguish in this decision between pipeline-based and LNG-based distribution networks.

([9]) Form CO, paragraph 6.3.2.

Figure 1: Distribution of natural gas in Portugal



Source: Annex 1, Response to RFI 2.

(8) In the previous decisional practice of the Commission, gas product markets have been segmented into (i) exploration of crude oil and natural gas, (ii) the development, production, and upstream wholesale supply of natural gas, (iii) downstream wholesale supply of natural gas, (iv) gas transmission (via high-pressure systems), (v) gas distribution (via lower-pressure systems), (vi) gas storage, (vii) gas trading, (viii) retail supply of gas (to end customers), and (ix) the markets for the infrastructure for gas imports. ([10])

(9) The TSO and DSOs are natural monopolies. In a decision concerning the Czech markets it was stated that no alternative transmission or distribution grids existed, and new entry was unlikely due to high investment costs and the full coverage of the existing network. ([11]) This was confirmed to be the case also in the markets relevant in this case. ([12])

(10) Retailers rely on DSO networks to distribute natural gas to their customers. The end-customer typically contracts with the retailer for the supply of natural gas, which is physically distributed to the end-customer through the DSO's network on behalf of the retailer and in execution of the retailer's contract with the end-customer. Typically, the end customer does not directly contract with or pay the DSO. Rather, retail suppliers collect the regulated fees for the use of the

([10]) Case M.12182 – CEZ / BCI / Gas Distribution, paragraph 12. See also Cases M.10941 - Eni / Sonatrach / Equinor / In Salah JV, paragraph 19; M.10619 - Snam / Eni / JV; M.10139 - DESFA / Copelozou / DEPA / GASLOG / BTG / Gastrade; M.9641 - Snam / FSI / OLT; M.3440 - Eni / EDP / GDP; M.3294 - Exxonmobil / BEB; M.3293 - Shell / BEB; M.4180 - Gaz de France / Suez; and M.3868 - Dong / Elsam / Energie.

([11]) Case M.12182 – CEZ / BCI / Gas Distribution, paragraph 13. See also Case M.11538 - CEZ / BCI / Czech Gas Networks JV, paragraphs 19-20 and 28.

([12]) Replies to the Commission's eRFI, Questions B.A.2, B.A.3 and B.A.4.

DSOs' networks from their customers (i.e., the-end customers) and then pay it to the DSOs.

(11) As described below in Section 5.2.2, access to these networks is regulated, with tariffs set by the Portuguese energy regulator – Entidade Reguladora dos Serviços Energéticos ('ERSE'). ERSE monitors compliance with these regulatory obligations, including the fees charged by DSOs to retailers.

4.2. Distribution of natural gas

4.2.1. Product market definition

(12) In previous decisions, the Commission identified two separate markets for the transportation of gas: transmission and distribution. ([13])

(13) In relation to distribution networks, the Commission has found the operation and management of a gas distribution network to be a relevant product market and a natural monopoly. ([14])

(14) The Notifying Party does not contest the Commission's prior decisional practice. ([15])

(15) The market investigation in this case confirmed the Commission's previous decisions. In particular, virtually all respondents agreed that the distribution of natural gas belongs to a separate product market from the transmission of natural gas. ([16])

(16) In line with its previous practice, the Commission will assess the competitive effects of the Transaction on the market for the distribution of natural gas.

4.2.2. Geographic market definition

(17) In its previous decisions, the Commission found the geographic market for gas distribution to be in line with the territory covered by each distribution network, such that each grid constitutes a distinct relevant geographic market. ([17])

(18) The Notifying Party does not contest the Commission's prior decisional practice. ([18])

(19) Almost all the respondents to the Commission's market investigation confirmed that it is appropriate to consider the area that each DSO's network covers to be a distinct geographic market, and that DSOs are natural monopolists in their respective geographies. ([19]) Almost all respondents indicated that duplication of the infrastructure would be unprofitable ([20])

([13]) Cases M.12182 - CEZ / BCI / Gas Distribution, paragraph 19; M.8870 - E.ON/INNOGY, paragraph 493; and M.4238 – E.ON / PRAZSKA PLYNARENSKA, paragraph 13.
([14]) Cases M.12182 - CEZ / BCI / Gas Distribution, paragraphs 19 and 23; M.8870 - E.ON/INNOGY, paragraphs 494 and M.4238 – E.ON / PRAZSKA PLYNARENSKA, paragraph 13.
([15]) Form CO, paragraphs 6.9 – 6.13.
([16]) Replies to the Commission's eRFI, Question B.A.1.
([17]) Cases M.12182 - CEZ / BCI / Gas Distribution, paragraph 24; M.8870 - E.ON/INNOGY, paragraphs 494-498; and M.4238 - E.ON / PRAZSKA PLYNARENSKA, paragraph 15.
([18]) Form CO, paragraphs 6.9 – 6.13.
([19]) Replies to the Commission's eRFI, Questions B.A.2. and B.A.3.
([20]) Replies to the Commission's eRFI, Question B.A.4.

(20) In line with its prior decisional practice, the Commission will assess the effects of the Transaction by reference to geographic markets corresponding to the territory covered by each distribution network.

4.3. Retail supply of natural gas

4.3.1. Product market definition

(21) The Commission has, in its previous decisions, considered the market for the retail supply of gas to final customers as a separate relevant product market, generally distinguishing between the supply of gas to (i) gas-fired electricity plants, (ii) large industrial customers, (iii) small commercial customers, and (iv) households. ([21]) In recent cases, the Commission has also considered a segmentation of the market for the retail supply of gas according to the criteria applied by the relevant national energy regulator, but has ultimately left the precise market definition open in those cases. ([22]) With regard to Portugal in particular, ERSE distinguishes within the market for the retail supply of gas between supplies to (i) household customers, (ii) small and medium-sized businesses, (iii) industrial customers and (iv) large industrial customers. ([23])

(22) The Commission has previously further distinguished within the market for the retail supply of gas between supplies to (i) universal service customers under regulated terms, and (ii) open market (competitive) customers. ([24])

(23) The Notifying Party does not contest the Commission's prior decisional practice. ([25])

(24) Almost all of the respondents to the market investigation confirmed that either of the two different ways of segmenting the market for retail supply of natural gas, as described in paragraph (21) are plausible. ([26])

(25) The results of the market investigation were inconclusive with regard to the question whether a distinction between supplies to universal service customers and open market customers is relevant in Portugal. A majority of the respondents replied that such distinction would not be relevant. ([27]) As one customer explained, *"*[*h*]*istorically, the regulated market was closed to new customers or switching, but following the sharp increase* [*recently in*] *gas prices, the Portuguese government reopened the access to the regulated suppliers, allowing customers to return from the liberalized market. This policy choice, while representing a temporary setback in the retail gas liberalization process, confirms that regulated and liberalized supply compete for the same customers"*. ([28]) A minority, on the other hand, replied that such distinction would be warranted, pointing to the distinct regulated framework applicable to universal service and

([21]) Cases M.12182 - CEZ / BCI / Gas Distribution, paragraph 25; M.8870 – E.ON / INNOGY, paragraphs 499-500; M.7927 – EPH / ENEL / SE, paragraph 33; M.6984 – EPH / STREDOSLOVENSKÁ ENERGETIKA, paragraph 29.
([22]) Cases M.12182 - CEZ / BCI / Gas Distribution, paragraph 26; M.4238 - E.ON / PRAŽSKÁ PLYNÁRENSKÁ, paragraph 14; and M.5365 – IPO / ENBW / PRAHA / PT, paragraphs 21-22.
([23]) Replies to the Commission's eRFI, Question B.B.2.1.
([24]) Case M.8870 – E.ON / INNOGY, paragraphs 647-653.
([25]) Form CO, paragraph 6.23.
([26]) Replies to the Commission's eRFI, Question B.B.2.
([27]) Replies to the Commission's eRFI, Question B.B.4.
([28]) Replies to the Commission's eRFI, Question B.B.4.1.

open market customers, as well as to the lower median prices paid by universal service customers compared to customers in the open market. ([29])

(26) As Factor Energia does only supply gas to household customers and small and medium-sized businesses in Portugal, ([30]) the potential segments for gas-fired electricity plants, industrial customers and large industrial customers will not be considered further in this decision.

(27) With regard to a distinction between (i) household customers, small commercial businesses and small and medium-sized businesses, ([31]) and (ii) universal service customers and open market customers, the Commission considers that for the purposes of the present case the exact product market definition can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition. As the assessment would not differ in any of the abovementioned segmentations, the Commission will assess the effects of the Transaction on an overall market for the retail supply of natural gas.

4.3.2. Geographic market definition

(28) In its decisional practice, the Commission considered the geographic market for the retail supply of gas to large customers as well as the retail supply of gas to small customers to be national, although for the retail supply to small customers the Commission found local elements of competition. ([32])

(29) The Notifying Parties do not question the Commission's previous practice of considering the retail supply market of natural gas to be national in scope. ([33])

(30) All respondents to the market investigation confirmed that the retail supply of natural gas is national in scope, while the majority of respondents confirmed that there are some local elements of competition in the supply to small customers. ([34])

(31) The Commission concludes that, for the purposes of this case, the exact geographic market definition of the markets for the retail supply of natural gas to household customers and small and medium-sized businesses in Portugal can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition. As the assessment would not differ if a sub-national scope was considered, the Commission will assess the effects of the Transaction on the market for the retail supply of natural gas at the national level.

5. COMPETITIVE ASSESSMENT

(32) The Transaction gives rise to a vertical relationship between Floene's activities in the regional distribution of natural gas in the territories covered by the networks it manages (i.e., the 'DSO activities', upstream), where Floene is a regulated monopolist, and Factor Energia's activities in the retail supply of natural gas to

([29]) *Ibid.*
([30]) Form CO, paragraph 6.22.
([31]) In the remainder of this decision, when reference is made to "small and medium-sized businesses", it should be understood to cover small businesses and medium-sized businesses both individually, as well as collectively.
([32]) Case M.12182 - CEZ / BCI / Gas Distribution, paragraph 33; M.11538 – CEZ / BCI / CZECH GAS, paragraph 42; and M.8870 – E.ON / INNOGY, paragraphs 514-518.
([33]) Form CO, paragraphs 6.24-6.27.
([34]) Replies to the Commission's eRFI, Questions B.B.3. and B.B.3.1.

customers in Portugal (the 'retail activities', downstream), where Factor Energia has a market share below [0-5]% in any possible market, ([35]) and where the Parties' combined market share is below[0-5]%. ([36]) ([37])

5.1. Legal framework

(33) According to the Non-Horizontal Merger Guidelines, ([38]) foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete. ([39]) Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered ([40]) and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered. ([41])

(34) For input or customer foreclosure to be a concern, three conditions need to be met post-Transaction: (i) the merged entity needs to have the ability to foreclose its rivals; (ii) it needs to have the incentive to do so; and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition on the downstream market (input foreclosure) or on consumers in the downstream market (customer foreclosure). ([42]) In practice, these factors are often examined together since they are closely intertwined.

([35]) As discussed in Section 4.3.1, the natural gas retail market can be further subdivided into separate segments of demand depending on the profile and volume of gas consumption (namely, gas supplied to small and large customers), or sub-segmented further by type of customers (household, small and medium-sized companies, industrial customers and large industrial customers). Factor Energia does not supply industrial and large industrial customers. Factor Energia's market shares with respect to household customers are below [0-5]% and below [0-5]% in the small and medium-sized companies segment (Form CO, Tables 14 and 15). In the event that Floene's activity as a last resort supplier is regarded as belonging to the same market as Factor Energia's retail supply, in 2024, the Parties' combined share is [5-10]% in the household segment (Floene's market share is of [5-10]%), and the combined market shares of the Parties in the small and medium-sized companies segment is below [0-5]% (Floene's market share is was [0-5]%). The Parties' combined market shares would, in any event, not differ materially if a separate segment for small commercial businesses were considered. As the Commission's assessment of a potential input foreclosure strategy focuses on Floene's ability and incentives to implement conducts that would be detrimental to rivals of Factor Energia retail businesses, and because none of the issues raised in that regard focus or depend on Factor Energia's position in the downstream market(s), the Decision will not make any further references to the potential subsegments of demand for retail supply of natural gas.

([36]) As indicated in paragraph 27, the Commission's assessment does not change as a result of the Parties' combined share in the relevant sub-segmentations of retail supply of natural gas.

([37]) The Transaction also results in horizontal overlaps and vertical links for a number of other markets: (i) in the potential horizontal relationship between Floene's universal service provider retail activity and Factor Energia's retail supply of natural gas, (ii) in the vertical relationship between the downstream wholesale supply of natural gas in Portugal (upstream, where Marubeni is active) and the retail supply of natural gas in Portugal (downstream, where Factor Energia is active); and (iii) a horizontal overlap in the generation and wholesale supply of electricity in Portugal and in Spain, and vertical relationship between generation and wholesale supply (upstream) and retail supply of electricity (where Factor Energia is active in Spain and Portugal) (or in wider electricity markets comprising both Portugal and Spain). However, none of these overlaps or links give rise to affected markets within the meaning of recital 25(g) Annex I to Regulation (EU) 2023/914, as they meet the conditions for review under points 5(d)(i)(aa) and 5(d)(ii)(aa) of the Notice on Simplified Treatment. Therefore, these overlaps will not be further discussed in this decision.

([38]) Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Non-Horizontal Merger Guidelines'), OJ C 265, 18.10.2008, p. 7.

([39]) Non-Horizontal Merger Guidelines, paragraphs 20-29.

([40]) Non-Horizontal Merger Guidelines, paragraph 31.

([41]) Non-Horizontal Merger Guidelines, paragraph 58.

([42]) Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

(35) The Commission will not assess the likelihood of customer foreclosure strategies given that, in the relevant upstream market, Floene is a natural monopolist, facing no actual or potential competitor (because it would be unprofitable to duplicate the existing infrastructure). ([43]) Accordingly, regardless of the level of the downstream market shares of Factor Energia, or of the Parties combined, a customer foreclosure strategy would have no effect in the relevant upstream markets (*i.e.*, there are no actual or potential competitors that could be foreclosed). The likelihood of customer foreclosure strategies will therefore not be further assessed in this decision.

5.2. Input foreclosure

(36) The Commission will assess whether the Transaction could lead to input foreclosure. To do so, it must assess more specifically whether post-Transaction, Floene would have the ability and incentive to effectively foreclose Factor Energia's competitors in the retail supply of natural gas by restricting their access to Floene's network, for instance by preventing access or increasing the price of access, or by deteriorating the quality of distribution services that it provides to Factor Energia's competitors in the relevant downstream markets.

5.2.1. The Notifying Party's views

(37) The Notifying Party submits that there is no risk of input foreclosure, because Marubeni would have neither the ability nor the incentive to restrict access to Floene's distribution network for competing retail suppliers of natural gas in the downstream market, for the reasons set out below. ([44])

(38) With respect to ability, the Notifying Party submits that (i) gas distribution activities in Portugal are licensed and are subject to a well-established stringent regulatory framework, and (ii) that the regulatory regime is subject to effective oversight by an independent administrative authority (ERSE). ([45])

(39) The Notifying Party submits that the regulatory framework applicable to gas distribution effectively constrains Floene's ability to foreclose, (i) by setting out the tariffs for retailers to access Floene's networks through a transparent and predictable methodology, (ii) by imposing non-discrimination obligations on DSOs in all relevant aspects related to a request for connection (e.g., applicable technical conditions, response times, provision of relevant data to retailers, etc.), (iii) by requiring detailed functional and informational unbundling rules to vertically integrated operators, ([46]) (iv) by foreseeing corrective measures and sanctions for breaches to the regulatory framework, ([47]) and (v) by providing to ERSE with powers to prevent, investigate and punish discriminatory or exclusionary conduct by DSOs. ([48])

(40) Specifically with respect to Floene's networks with less than 100,000 customers, which are exempt from legal and functional unbundling obligations, ([49]) the Notifying Party submits that the accounting unbundling rules that govern also these DSOs (requiring separate accounts between distribution and retail activities,

([43]) Replies to the Commission's eRFI, Questions B.A.3 and B.A.4.
([44]) Form CO, paragraph 8.23.
([45]) Form CO, paragraphs 8.24-8.25.
([46]) Form CO, paragraphs 8.26-8.27.
([47]) Form CO, paragraph 8.29.
([48]) *Ibid*.
([49]) Response to RFI 1, paragraph 1.14.

subject to independent auditing obligations), and the remaining regulatory obligations they are also subject to, decisively constrain Floene's ability to foreclose. ([50])

(41) With respect to incentive, the Notifying Party submits that Floene would not, in any event, have an incentive to pursue a foreclosure strategy, ([51]) because (i) Marubeni controls Floene jointly with other shareholders (Allianz and Toho Gas) that do not have an interest in Factor Energia and therefore would oppose a foreclosure strategy that could only benefit Marubeni, ([52]) (ii) the impact of the sanctions ERSE would impose in response to such potential conduct would outweigh any benefits resulting from the foreclosure strategy. ([53])

5.2.2. The Commission's assessment

Ability to foreclose

(42) Input foreclosure may raise competition concerns if it concerns an important input for the downstream product and if the merged entity has a significant degree of power in the upstream market. ([54]) The Commission finds that these criteria are met with respect to Floene's operation of its distribution network, as follows. *First*, Floene is a natural monopolist in the areas of its distribution networks (i.e., it holds a 100% market share in each, as indicated in paragraph (15)). *Second*, the gas distribution services provided by Floene are a critical input in each network, as confirmed by the majority of respondents to the market investigation ([55]). Without access to Floene's distribution networks, downstream retail suppliers are unable to supply natural gas to customers in the networks managed by Floene. Because Floene's distribution services in each of its networks are a critical input for retail suppliers of natural gas Floene seems a priori to have an ability to foreclose.

(43) However, the Commission finds that Floene is nevertheless unlikely to have the ability to engage in an input foreclosure strategy in any of the networks it manages, for the reasons set out below:

(44) *First*, as confirmed by the majority of participants in the market investigation natural gas distribution activities in Portugal are subject to established sectoral regulation, and supervision and enforcement of the sectoral regulation is carried out effectively by ERSE (an independent administrative authority). The majority of respondents to the market investigation consider that, following the Transaction, Floene would not have the ability (i) to increase the tariffs charges for access to its distribution networks, ([56]) (ii) to deny access to its distribution networks to rivals of Factor Energia, ([57]) or (iii) to deteriorate the quality of access (through delays, decreasing capacity, or applying discriminatory terms to Factor Energia's rivals). ([58])

(45) This is due to the fact that the Portuguese regulatory framework (that implements the EU's gas sector legislative framework) sets up a detailed set of rules that

([50]) *Id.*, paragraphs 1.14-1.19.
([51]) Form CO, paragraph 8.35.
([52]) Form CO, paragraph 8.36.1.
([53]) Form CO, paragraph 8.36.3.
([54]) Non-Horizontal Merger Guidelines, paragraphs 34 and 35.
([55]) Replies to the Commission's eRFI, Question C.3.
([56]) Replies to the Commission's eRFI, Question C.6.
([57]) *Ibid.*
([58]) *Ibid.*

govern the activity of natural gas distribution – these rules are designed to ensure fair competition in retail supply of natural gas, and confer to ERSE powers to monitor, enforce and sanction any potential breaches. As confirmed by the majority of respondents in the market investigation as well as ERSE itself:

(a) ERSE and the Portuguese energy regulation provide effective oversight of the activities of DSOs to make sure retailers have access to DSO networks on non-discriminatory terms; ([59])

(b) The fees for the use of DSOs' networks are set by ERSE and therefore DSOs cannot charge discriminatory fees to different retailers; ([60])

(c) Vertically integrated companies, such as Floene and Factor Energia, are required to separate their gas distribution operations from other activities in an effective manner; ([61])

(d) The regulatory framework provides for effective sanctions for infringement. ERSE would take timely action to resolve/prevent infringements if necessary; ([62]) and

(e) ERSE and the regulatory framework would prevent Floene's DSOs from discriminating in a harmful way against retailers (e.g. lowering quality, withholding important ancillary services, etc). ([63])

(46) *Second*, the Commission confirmed with ERSE the detailed nature of regulatory obligations faced by DSOs in Portugal, and that this regulatory regime is designed to ensure a right to access to the DSOs networks on non-discriminatory terms. The Commission also confirmed ERSE's track record of actively enforcing its regulatory framework, in particular in relation to vertically integrated companies. In particular, ERSE confirmed that (i) it is an independent regulator, (ii) tariffs for the access to Floene's distribution networks are set annually, in a transparent process (with parameters set for multi-annual periods), ([64]) (iii) non-price factors, that could lower the quality of service or deny access to important ancillary services, are closely regulated by ERSE. This includes standardised contracts contractual terms, such as settlement provisions or guarantees, that DSOs and retailers must comply with. ([65]) ERSE also clarified (iv) that market players that deviate from the regulatory framework are subject to sanctions under a defined sanction framework, in which severe misconduct can be fined up to 10% of a company's turnover. In ERSE's view, this creates a very strong deterrent against non-compliance. ([66])

(47) Specifically with respect to the potential use of commercially sensitive information of a DSO (such as Floene) to the benefit of its integrated retail supplier of natural gas (such as Factor Energia), ERSE indicated that it has established a robust regulatory regime designed to curtail any potential

([59]) Replies to the Commission's eRFI, Question C.7.
([60]) *Ibid*.
([61]) *Ibid.*
([62]) *Ibid.*
([63]) *Ibid.*
([64]) Tariffs are determined following an initial tariff proposal submitted by ERSE to a tariff council, that includes representatives from all relevant stakeholders (both customers and companies). This council forms submits an opinion that informs ERSE's ultimate decision regarding the applicable tariffs. Minutes of the meeting with ERSE of 28 January 2026, paragraphs 10-11.
([65]) Minutes of the meeting with ERSE of 28 January 2026, paragraph 13.
([66]) *Id*., paragraph 10.

advantages of vertically integrated suppliers. ([67]) This regulatory regime has been developed against the background of ERSE's multiple investigations into Floene, when it was vertically integrated with the incumbent retail gas supplier, Galp. ([68]) ERSE established detailed regulations to ensure equal access to commercially sensitive information by all suppliers that span across customer switching data, on how this data must be kept and transferred through a platform designed by ERSE, how DSOs must follow standardised data sets, and are subject to an independent external audit that verifies that commercially sensitive information is not misused. ([69]) DSOs must indicate and receive ERSE's approval on a list of information to be regarded as commercially sensitive, and on compliance programmes. ([70]) These regulatory obligations are applicable irrespective of whether the specific network managed by the DSO has more than 100,000 customers (in which case the DSO is required to have separate legal and functional companies for distribution and retail), or whether the network has less than 100,000 customers (in which case, only accounting separation between distribution and retail is necessary). ([71])

(48) *Fourth*, the market investigation confirmed that any deviation from these rules would be detected quickly. All respondents to the market investigation providing a substantive response indicated that if, post-Transaction, Floene were to deny or deteriorate the terms of access (e.g., price increase, access delay, capacity limitation) to Factor Energia's competitors in the retail supply of natural gas in Floene's networks, this would be easily detected by market participants and ERSE. ([72]) ERSE confirmed that deviations on specific regulatory rules such as the tariffs applicable or other contractual terms "*are immediately detectable and thus practically impossible*." ([73])

(49) *Finally*, the effectiveness and deterrence effect of this regulatory framework is demonstrated (i) by ERSE's proactive investigations of Galp's conduct when it was a vertically integrated company with both distribution and retail supply of natural gas activities, ([74]) and (ii) the absence of investigations, and of concerns regarding the competitiveness of the market, with respect to Dourogás that prior to 2023 was a vertically integrated company. ([75]). Further, ERSE confirmed that its investigations on DSOs, in recent years, have involved matters that are not of the most severe gravity – e.g., the failure to provide the data on the DSOs website, or failure to make data available through an accessible platform. ([76]) ERSE finds that the regulatory regime that foresees fines up to 10% of a company's turnover for severe misconduct creates a very strong deterrent against non-compliance, and has not had to apply sanctions of this nature. ([77])

(50) Furthermore, for the sake of completeness the Commission also investigated specifically whether the Transaction would put Factor Energia in a better position to capture the universal service provider customers served by Floene if/when

([67]) Cf. Minutes of the meeting with ERSE of 28 January 2026, paragraph 6.
([68]) Floene was previously named Galp Gás Natural Distribuição. Cf. fn. 4 above.
([69]) Cf. Minutes of the meeting with ERSE of 28 January 2026, paragraph 7.
([70]) Cf. Minutes of the meeting with ERSE of 28 January 2026, paragraph 8.
([71]) Cf. Minutes of the meeting with ERSE of 28 January 2026, paragraph 18.
([72]) Replies to the Commission's eRFI, Question C.9.
([73]) Minutes of the meeting with ERSE of 28 January 2026, paragraph 15.
([74]) Minutes of the meeting with ERSE of 28 January 2026, paragraph 6.
([75]) Dourogás sold its gas distribution business to Sonorgás in December 2022. Cf. Minutes of the meeting with ERSE of 28 January 2026, paragraph 8.
([76]) *Id*., paragraph 10.
([77]) *Ibid*.

these customers are required to transition to retail suppliers in the open (competitive) market. ([78]) The majority of the substantive responses to the market investigation indicated that all retail suppliers will likely have equal opportunities in winning vulnerable customers currently served by Floene. ([79]) Therefore, the fact that Floene acts both as a distributor and as a last resort retailer is unlikely to be an advantage to Factor Energia if (and when) these end-customers are required to procure their gas supply from retailers in the open market.

(51) In sum, the Commission finds that the applicable sectoral regulation in Portugal, as well as ERSE's enforcement of that regulation, provides a well-established framework with sufficient safeguards and mechanisms that effectively prevent vertically integrated operators from engaging in input foreclosure strategies.

Incentive to foreclose

(52) When assessing the merged entity's possible incentive to foreclose, the Commission assesses the degree to which foreclosure would be profitable. The vertically integrated firm will consider how its supplies of inputs to competitors downstream will affect not only the profits of its upstream activities, but also of its downstream activities. The merged entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers. ([80])

(53) The Commission finds it unlikely that in this case the merged entity would have the incentives to implement an input foreclosure strategy post-Transaction, for the following reasons.

(54) *First*, the Commission finds that Floene's networks are not capacity constrained and, therefore, it is not necessary to allocate scarce resources at the distribution level between different natural gas retailers. The absence of capacity constraints was confirmed by all respondents providing a substantive response in the market investigation ([81]) and by ERSE. ([82]) Further, the Portuguese regulatory regime includes detailed regulations regarding capacity and grid connections that DSOs must comply with and that are transparent to customers. ([83]) Therefore, the Commission finds that it is unlikely that Floene would have an incentive to prefer Factor Energia to another retail supplier of natural gas, since without capacity constraints and with precise deadlines to establish connections, any worsening of terms in allocating capacity to retail supplier would decrease Floene's revenues in providing access to its networks.

(55) *Second*, the Commission finds that the fact that Floene is jointly controlled by Marubeni likely has an impact on Floene's incentives to pursue an input foreclosure strategy to benefit Factor Energia (solely controlled). The

([78]) The specific regime concerning universal service customers is scheduled to be terminated in 2027, when universal service customers would be required to transition to market-based supplier. However, it is currently uncertain whether this transition will take place in 2027, as this measure has already been postponed on three occasions. Cf. Minutes of the meeting with ERSE of 28 January 2026, paragraph 19.

([79]) Replies to the Commission's eRFI, Question C.10.

([80]) Non-Horizontal Merger Guidelines, paragraph 40.

([81]) Replies to the Commission's eRFI, Question C.8.

([82]) Minutes of the meeting with ERSE of 28 January 2026, paragraph 14.

([83]) DSOs need to respond to connection requests within a specified period or technically justify why it is not possible, and need to undertake the developments to the networks that are necessary to enable the connections. Cf. Minutes of the meeting with ERSE of 28 January 2026, paragraph 14.

Commission finds that it is unlikely that the co-controlling shareholders of Floene – Allianz and Toho Gas – would have an interest in furthering Factor Energia's business, when this could result in a lowering of revenues of Floene (as per paragraph (54) above) or in breaches that could result in sanctions (as per paragraph (46)) that would pose a reputational and financial damage to Floene. As a result, the Commission finds that any potential benefits that Marubeni could derive from an input foreclosure strategy are unlikely to be sufficient for Allianz and Toho Gas to have an incentive in pursuing such strategy.

(56) *Third*, the fact that market participants and ERSE have indicated that, in principle, Floene would not be able to increase applicable tariffs, deny access to its networks, or deteriorate the quality of access (as per paragraph (44) above), and that in recent years ERSE has not investigated conduct that is among the most severe (see paragraph (49) above), indicates that the regulatory framework is effective in suppressing any incentive to engage in input foreclosure strategies. This is also illustrated by the fact Floene's shares of supply between 2022 and 2024, in a market encompassing both competitive offers and the universal service offer, have remained limited. ([84])

(57) Considering the above, the Commission finds that it is unlikely that the merged entity would have the incentive to implement an input foreclosure strategy post-Transaction. It is therefore not necessary to assess whether such a hypothetical strategy could have a significant detrimental effect in the relevant downstream markets.

5.2.3. Conclusion on input foreclosure

(58) For the reasons set out above, the Commission finds that it is unlikely that, post-Transaction, Floene would pursue an input foreclosure strategy to the benefit of Factor Energia's natural gas retail business. This was also confirmed in the market investigation: all respondents that provided a substantive response confirmed that they did not expect the Transaction to have a significant impact on their company ([85]) or the retail supply of natural gas market. ([86])

(59) The Commission therefore concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to potential foreclosure of Floene's distribution networks to Factor Energia's competitors on the downstream market of retail supply of gas.

([84]) Floene's market shares in the overall market for the retail supply of natural gas was [0-5]% in 2022, [0-5]% in 2023 and [0-5]% in 2024. In narrower segments of demand, Floene's market shares were as follows: (i) in the household segment, [0-5]% in 2022, [5-10]% in 2023 and [5-10]% in 2024; (ii) in the SME segment, [0-5]% in 2022, [0-5]% in 2023 and [0-5]% in 2024.

([85]) Replies to the Commission's eRFI, Question D.1.

([86]) Replies to the Commission's eRFI, Question D.2.

6. CONCLUSION

(60) 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)
Teresa RIBERA
Executive Vice-President