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The Hague, 27 June 2022

Your reference : Project Aramis | Joint Marketing Initiative
Our reference : ACM/UITNZP/001473
Subject : No action letter for the Agreement between Shell and TotalEnergies regarding a joint marketing initiative for CCS services (project Aramis)

Dear Sir/Madam,

This letter is in response to your request of 13 April 2022 to the Authority for Consumers and Markets (ACM), filed on behalf of Shell and TotalEnergies (TTE) (the Parties), for informal guidance as set out in the draft Guidelines regarding sustainability agreements (draft Guidelines).¹ ACM's assessment of the planned joint marketing initiative (JMI) for carbon capture and storage (CCS) services in the Netherlands by the Parties, is based on the information that you and your clients have provided to us. Based on this assessment ACM has decided not to investigate the initiative further. Below ACM elaborates on (a) the background and context of the initiative, (b) the relevant market, market shares and effect on trade and (c) its assessment of the initiative.

Background and context of the initiative

Initiative is part of Project Aramis

ACM understands that the Parties have plans to jointly market a volume of 5 million tons CO₂ per annum (MTPA) for CCS. This JMI of CCS services is part of a larger cooperation between the Parties and two State owned companies, Gasunie and Energie Beheer Nederland (EBN), to provide large-scale CCS services in depleted offshore gas fields under the Dutch part of the continental shelf of the North Sea to emitters of CO₂ based in the Netherlands² (Emitters) (Project Aramis). The project consists of the shipping and pipeline based transport of CO₂ from Emitters' sites, the construction and exploitation of an onshore terminal, a compressor, a trunkline with a planned capacity of 22 MTPA to transport the CO₂, and storage at prepared sites. According to the Parties Project Aramis can be considered an innovative project given its scale, the involvement of private parties and because it is based on a new technology to integrate transport and storage of gaseous and cryogenic CO₂.

The Parties argue that the investments and risks associated with Project Aramis are significant. The investment of several billion Euros in Project Aramis, including the planned high-capacity trunkline, requires

¹ ACM, Second draft version of the Guidelines on Sustainability Agreements, July 2021, link: <https://www.acm.nl/sites/default/files/documents/second-draft-version-guidelines-on-sustainability-agreements-opportunities-within-competition-law.pdf>.

² The initiative will initially in principle be limited to providing CCS services to Emitters based in the Netherlands as cross-border transport of CO₂ is currently prohibited from a legal point of view. Although the London Protocol was amended to allow cross-border transport of CO₂ for sub-seabed storage under a permit regime, this amendment has not yet been ratified by the required number of contracting parties to enter into force. Alternatively parties which ratified the amendment could bilaterally agree upon cross-border transport of CO₂ but such bilateral agreements are currently not in place. See 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Protocol).

certainly as to a minimum level of capacity booking of at least 5 MTPA, the required “Launching Volume”. To reduce the risks involved and promote the uptake of CCS in Project Aramis, the Parties aim to set up the initiative to jointly market this Launching Volume to Emitters (Launching Emitters). It is on this JMI that the Parties wish to receive informal guidance from ACM. This guidance is provided by means of the present letter.

First phase: the Joint Marketing Initiative

The JMI comprises several elements. According to the Parties, its center of gravity is joint production and marketing. The JMI involves joint production in the sense of providing shared infrastructure in preparation to supply CCS services. In terms of marketing it involves a joint offer for all the services regarding CCS that are based on a jointly established rate for shipping and storage, in addition to other price components that are either established by the Parties individually and/or the other parties involved in the context of the Project Aramis. The joint tariff is offered by the Parties for CCS services until the 5 MTPA is fully booked. It is the Parties' priority to book the Launching Volume of 5 MTPA in order to underpin the investment of Project Aramis as a whole. The duration of the JMI itself is estimated at 18-24 months, which is the time considered necessary to conclude a fully-termed Transport and Storage Agreement (TSA) with the Launching Emitters.

The joint tariff will apply to 15 years of continuous CCS services at an agreed volume per year.³ The duration is linked to the 2022 Stimulation of Sustainable Energy Production and Climate Transition (SDE++) subsidies that are granted for 15 years.⁴ SDE++ subsidies are held to be necessary to make CCS commercially feasible during at least the first phase of Project Aramis. According to the Parties, the SDE++ scheme also ensures that the joint tariff for the CCS services rendered under the JMI will be fair. This is because of the design of the pricing mechanism underlying the SDE++ scheme, which includes a cost assessment, a comparison with other subsidy applicants and a fixed ceiling on the amount of subsidy per ton CO₂. In more detail, under the 2022 SDE++ scheme the following applies:

- Subsidies are allocated by the *Rijksdienst voor Ondernemend Nederland* (Netherlands Enterprise Agency or RVO) based on a tender in successive phases that is designed to maximise the reduction of CO₂ at the lowest cost. The feasibility of the tender is tested by RVO.
- Part of the 2022 SDE++ subsidy is reserved at a capped volume for CCS.
- Only the unprofitable component of CCS technology during the operational period of the project will be eligible for subsidy. This unprofitable component is the difference between the costs of CCS ('base' rate) and the market value ('corrective' amount). The base rate is fixed for the entire subsidy period, but the corrective amount is set annually.
- The market value is linked to the EU Emission Trading System (ETS) price for CO₂. As a result, when the market value (e.g. the ETS price) rises the unprofitable component decreases and so does the amount of the subsidy Emitters receive.⁵ If the joint offer for the CCS services is higher than the ETS price, Emitters will rather purchase ETS rights, or look for other alternatives, according to the Parties.
- Emitters applying for the subsidy have to submit prices for the different components of the total CCS costs. The reasonableness of the price for the shipping and storage components is tested separately by a specialized consultancy agency (Xodus) on behalf of RVO.

Consequently, ACM understands that RVO will not grant SDE++ subsidies covering the difference between the price of an ETS credit and the price of CCS-services under the JMI if it deems the price set, and as a consequence the subsidy, is too high.

³ The CO₂ itself will be stored for perpetuity.

⁴ The SDE++ subsidy scheme has been vetted by the European Commission under its state aid control regime (Commission decision, SA.53525, 2020/N, *SDE++ scheme for greenhouse gas reduction projects, including renewable energy*). Project Aramis has been designated by the European Commission as a Project of Common Interest that is eligible for Connecting Europe Facilities (CEF) subsidies. The SDE++ 2022 will open on Tuesday 28 June at 9:00. See <https://english.rvo.nl/subsidies-programmes/sde>.

⁵ It is expected that the ETS price, i.e. the market value, will rise over time. When the annually set market value rises above the base rate, no subsidy will be provided to Emitters.

Second phase: individual competition

In a second phase of Project Aramis the remaining capacity of the trunkline in excess of the Launching Volume of 5 MTPA will be used by the Parties and third parties to supply CCS services in competition with each other. Interested third parties will obtain regulated access on fair, open and non-discriminatory terms to the infrastructure of Project Aramis based on the Dutch Mining Act.⁶ Any resulting subsequent material decrease in tariffs for storage or transport is passed on to the Launching Emitters regarding the first phase, based on a pass-on clause in their contract for CCS with the Parties (which they variously describe as a First Nation Clause and/or Most Favoured Nation Clause, MFN).

Objective is reduction of CO₂ emissions

The objective of the JMI, as stated by the Parties, is to ensure Project Aramis is viable, and to establish a larger market for CCS services in the Netherlands based on private investment. This will allow those industries that cannot alter their production processes in the short term to decrease their greenhouse gas emissions and contribute to the Netherlands achieving its sustainability goals.

Relevant market, market shares and effect on trade*Relevant market*

For the purpose of the current assessment, ACM takes as a starting point that Shell and TTE are at least potential competitors in the market for the provision of CCS services.⁷ While the geographical market for CCS may eventually develop towards an EEA-wide market, ACM considers this market to be national at this point in time. This is because cross-border transport of CO₂ for CCS purposes is currently legally blocked by international agreements like the London Protocol.⁸ Also, the Parties submitted that the JMI is focused on Emitters based in the Netherlands, as the SDE++ scheme is currently only open to those Emitters.

Effect on trade

It should be noted that there may be an effect on trade between the Member States given the international ambitions of Project Aramis, as it explicitly aims to develop cross-border CCS services in the future once restrictions are lifted. The JMI also covers the entire territory of the Netherlands. Therefore, ACM conducts its analysis on the basis of both Article 6 of the Dutch Competition Act (Mw) and Article 101 of the Treaty on the Functioning of the European Union (TFEU).

Market shares

The Parties stress that market shares are almost impossible to calculate and in fact not of overriding importance on a newly developing and dynamic market such as the market for CCS services. Based on the available public sources, the market share of the JMI from a demand side point of view would be at least approximately 17% of projected volumes of CCS services (capture of CO₂) for 2030 in the Netherlands.⁹ From a supply side point of view, i.e. the total expected capacity (transport and storage) in the Netherlands, the 5 MTPA of the JMI would constitute about 20.4% of the Dutch market for CCS services in 2026-2027.¹⁰ Thereby, only Project Aramis and Project Porthos¹¹ are taken into account, as other CCS projects differ

⁶ Article 32 of the Dutch Mining Act (*Wet van 31 oktober 2002, houdende regels met betrekking tot het onderzoek naar en het winnen van delfstoffen en met betrekking tot met de mijnbouw verwante activiteiten*).

⁷ The market for CCS services (transport and storage) is emergent and in full development. The Parties submitted, and ACM follows the Parties in this, that the market for CCS services – at least for the time being – should not be further segmented into (i) capture, (ii) storage and (iii) transport, as the different parties involved and parts of the chain show interdependency. Emitters need the full package; merely securing one or two of these elements is not sufficient. Reference is also made to Decision ACM, 29 July 2021, ACM/21/053016 (*Nederlandse Gasunie, Energiebeheer Nederland and Havenbedrijf Rotterdam / JV*).

⁸ See footnote 2.

⁹ Based upon the estimate of PBL for total CCS demand, see <https://www.rvo.nl/sites/default/files/2021/12/Rapport-Nationale-CO2-opslagbehoefte-tot-2035-30-september-2021-Ruimtelijke-verkenning-CO2-transport-en-opslag.pdf>, p. 3 and <https://www.ebn.nl/wp-content/uploads/2018/07/Studie-Transport-en-opslag-van-CO2-in-Nederland-EBN-en-Gasunie.pdf>, p. 18 (in both cases up to 30 MPTA in 2030). ACM notes that it is uncertain to what extent the numbers in the reports are still accurate, however, given that it includes project Athos for example. In September 2021 it became known that project Athos will not proceed in the envisaged form, see <https://www.ebn.nl/nieuws/athos-project-stopt-in-huidige-vorm-na-besluit-tata-steel/>.

¹⁰ The launch of Project Aramis is expected in 2026-2027.

¹¹ Project Porthos provides 2,5 MTPA of CCS services of the gaseous type of CO₂ in the port of Rotterdam, see <https://www.porthosco2.nl/project/> and <https://www.gasunie.nl/projecten/porthos>.

from those in the sense that these other CCS projects do not use storage capacity under the Dutch part of the continental shelf of the North Sea. Considering that the market for CCS services is currently barely existing but in full development, ACM accepts that this is a conservative approach based on the total forecast capacity of Project Aramis. Moreover, as set out above, an EEA-wide market seems likely to develop, meaning that it is expected that international CCS projects may eventually also compete with Project Aramis.

However, as the Parties argued and as set out above, Project Aramis could be considered the first-of-its-kind. If Project Aramis were considered to be on a separate market given its innovative technology and scale, the market share would evidently be higher. In addition, the 20.4% market share is based upon the 5 MTPA of the JMI as part of the total capacity of 22 MTPA of Project Aramis and not just on the JMI itself. Yet the remaining capacity, exceeding the first 5 MTPA covered by the JMI, has not been marketed, and there is still uncertainty whether it can be reached in the near future.

In its assessment, as set out below, ACM takes into account this uncertainty regarding the market shares.

ACM's assessment of the JMI

ACM has considered three ways in which the JMI can potentially be justified as suggested by the Parties:

- (i) by the absence of a restriction of competition as a new market is created;
- (ii) by the applicability of an exemption under the Block Exemption Regulation (BER) for Specialisation Agreements (Specialisation BER)¹²; or
- (iii) by the legal exception under Article 6 para 3 Mw and Article 101(3) TFEU.

(i) The possible absence of a restriction of competition

The Parties have submitted that the JMI could potentially fall outside the scope of Article 6 para 1 Mw and Article 101(1) TFEU because it creates a new market through innovation, both given its large scale and as it is based on a new methodology/concept to combine cold CO₂ at minus 25 °C from shipped cryogenic origin and hot CO₂ at 50 to 80 °C from piped gaseous origin at 180 bar high pressure into the trunkline and integrate these in the storages. Currently there is only one other CCS project in the Netherlands which stores CO₂ under the Dutch part of the continental shelf of the North Sea: project Porthos. That project has been set-up by State owned companies, however. Project Aramis will therefore be the first CCS project set-up by private parties in the Netherlands. Furthermore, the JMI may be necessary to acquire sufficient production resources and scale in order to create Project Aramis, and the associated sustainability benefits, and to reduce the risks involved in deploying integrated technology for processing gaseous and cryogenic CO₂ for the first time.

However, given the scope of the restrictions, e.g. the joint setting of prices, capacity and quality and the 15 year duration of the contracts, ACM cannot exclude that the JMI may appreciably restrict competition in the market for the provision of CCS services. Therefore, ACM has made its assessment on the basis of that presumption.

(ii) Applicability of the Specialisation BER

In the alternative, Parties have submitted that the JMI can be considered exempted based on the Specialisation BER, because it would qualify as a joint production agreement that also provides for joint distribution and marketing.¹³ The Specialisation BER stipulates that the fixing of prices charged to the customers is in that case also covered by the exemption. In order to be eligible for the exemption, however,

¹² Regulation 2010/1218/EU of the Commission on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements.

¹³ The Specialisation BER defines that agreements between two or more parties that agree to produce certain products jointly can benefit from exemption under it, subject to meeting certain criteria. This may include the joint distribution and marketing of the jointly produced products as well. 'Product means a good or a service, including both intermediary goods or services and final goods or services', see Regulation 2010/1217/EU of the Commission on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements, article 1 point d).

the Specialisation BER requires that the market shares of the JMI on the relevant market does not exceed 20%.

As set out above, the market share of the JMI on the demand side of the market would be 17% in 2030, and on the supply side of the market 20,4% in 2026-2027. Although the latter market share is just slightly above 20%, given the uncertainty of the market share due to the nascent state of the market for CCS services and the difficulty of resolving this in the context of the current assessment, ACM has decided to carry out a preliminary individual analysis of the JMI under the criteria for a legal exception set out in Article 6 para 3 Mw and Article 101(3) TFEU.

(iii) Applicability of the legal exemption under Article 6 para 3 Mw and Article 101(3) TFEU

Presuming that the JMI restricts competition, and the Specialisation BER does not apply, the JMI may still be acceptable under the directly applicable legal exemption of Article 6 para 3 Mw and Article 101(3) TFEU, based upon the (sustainability) efficiencies it generates. In order for an agreement to fall under the legal exemption the JMI has to meet four criteria. These are: (a) it must contribute to improving the production or distribution of goods or promote technical or economic progress; (b) consumers must receive a fair share of the resulting benefits; (c) the restriction of competition must be indispensable to achieve these benefits; and (d) the agreement must not give the parties the possibility of eliminating competition in respect of a substantial part of the products in question. ACM will discuss each of these criteria in turn below.

a) Improvement of production or distribution of goods or promotion of technical or economic progress

Upon studying the submissions by the Parties, ACM understands the JMI as follows:

- During the Launching Phase of Project Aramis, the JMI might entail restrictions of competition, most importantly on price. This first pre-competitive phase is necessary to construct the envisaged transport and storage infrastructure at the desired scale, creating a new market for integrated CCS services in the Netherlands, covering both gaseous and cryogenic CO₂.
- During the second phase of Project Aramis, the Parties will compete for the provision of CCS services in this market with each other, including on price. The MFN clause, included at the request of the Launching Emitters, ensures a certain level of pass-on of the benefits of the competitive process to the Launching Emitters, i.e. the customers.
- The two phases are therefore related and the first pre-competitive phase is a necessary condition for the emergence and success of the latter competitive phase, which involves a degree of compensation for the Launching Emitters.
- In both phases the transport and storage of the CO₂ is subject to the rules laid down in the Dutch Mining Act, through which the CCS Directive is transposed¹⁴, including the requirement that third parties should be able to obtain fair, open and non-discriminatory access.

This means that, in the first place, the Launching Phase itself creates a significant new capacity of 5 MTPA of CCS. If successful, following the Launching Phase, the JMI helps to create by means of Project Aramis a CCS infrastructure with a capacity of 22 MTPA and thereby a wider new market for CCS in the Netherlands. This is not only to the benefit of the Parties, but also allows third parties to provide CCS services to Emitters, in competition with the Parties. Furthermore, as a result of the JMI, the Parties do not have to duplicate the infrastructure, allowing for cost savings through economies of scale and scope of CCS in both gaseous and (liquified) cryogenic form. The JMI thus promotes a multimodal infrastructure serving both types of CO₂ for the customers and earlier commercial deployment of CCS services for both types of CO₂

¹⁴ See footnote 6 and Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation 2006/1013/EC of the European Parliament and of the Council on shipments of waste.

on the market. At the same time, it secures the operational and financial resilience of the project and thereby reduces risks.

The Parties' price-setting for CCS will be subject to cost control due to the availability of ETS rights as an alternative for CCS, the pricing mechanism underlying the SDE++ scheme, during the JMI phase. It will also be subject to competition from third parties in the subsequent competitive phase, leading to market-based prices for the relevant part of CCS services covered by the JMI due to the MFN clause.

In addition, if taken up by Emitters, the new CO₂ reduction technology introduced by the JMI allows them to reduce their CO₂ emissions, thereby contributing to achieving national and international legally binding climate goals.¹⁵ If the Parties succeed in contracting the Launching Volume of 5 MTPA, then the benefits of the agreement would at least amount to 5 MTPA of CO₂ reduction multiplied by the duration of the CCS contracts of 15 years, to be stored in perpetuity. Moreover, it will allow Project Aramis to be developed as a whole, with further CO₂ reduction benefits.

The JMI thus brings environmental benefits because capturing and storing CO₂ at current rates is believed to be less costly from a societal perspective than emitting it into the atmosphere.¹⁶ If successful, this will likely also be the case for the CCS services offered in the framework of Aramis. Insofar as CCS is offered at tariffs that reflect the environmental costs involved and it is performed taking environmental risks into account, ACM does not believe that offering CCS will impair the willingness of Emitters to invest in other methods to reduce the CO₂ footprint of their activities. Because Emitters will continue to seek more cost-efficient ways to reduce their CO₂ footprint, the incentives for R&D will remain in place when CCS becomes available.

If the Launching Volume is not reached in time through the JMI, the Parties have submitted that Project Aramis will likely not be launched, and consequently there will not be any gains.¹⁷ However, as in that case the JMI will not take effect, no restrictions of competition will arise either.

ACM therefore concludes that the JMI will create efficiency gains as required by Article 6 para 3 Mw and Article 101(3) TFEU in terms of costs savings by avoiding infrastructure duplication, offering economies of scale and scope and reducing risk while creating an innovative market for CCS services in the Netherlands. It also offers objective sustainability benefits as an environmental damage agreement under Article 6 para 3 Mw, as stipulated in the draft Guidelines, by offering Emitters an additional solution for decreasing their CO₂ emissions, without affecting the options currently available to them.

b) Fair share for consumers

With regard to the fair share criterion, it is important that in the first place, the availability of CCS for Emitters will be increased. Furthermore, the JMI will provide Emitters with a novel way to reduce their CO₂ emissions, without affecting the options they already have for dealing with their CO₂ emissions, both in terms of choice and price. In absence of the JMI, the type of CCS offered by the Parties would likely not be available for Emitters in the short term and/or at higher cost. The relevant counterfactual in a cost-benefit analysis would thus be the situation where this type of CCS is not offered (see also below (c) indispensability). Compared to this counterfactual, the Emitters will be better off (or in any case, not be worse off). Hence, it appears likely that the JMI is overall beneficial for (all) consumers (Emitters) within the relevant market and thus, the fair share criterion is met under both Article 6 para 3 Mw and Article 101(3) TFEU.

¹⁵ See Paris Climate Agreement, 12 December 2015, Treaty Series 2016, no 162, IPCC, Climate Change 2022: Mitigation of Climate Change and the Dutch Climate Act of 28 May 2019.

¹⁶ See PBL, Conceptadvies SDE++ 2022 CO₂-Afvang en -Opslag (CCS), 2021, Den Haag, accessible via <https://www.pbl.nl/sites/default/files/downloads/pbl-2021-conceptadvies-sde-plus-plus-2022-co2-afvang-en-opslag-ccs-4394.pdf> and for the RVO SDE++ subsidy scheme, see footnote 4.

¹⁷ The Parties suggest that without the JMI, Project Aramis would in any case be introduced much later. Even in this scenario the accelerated introduction of Project Aramis is a relevant efficiency gain.

Furthermore, ACM considers that, according to its draft Guidelines, the JMI qualifies as an environmental damage agreement, leading to cleaner air and less CO₂ pollution for society, which can be taken into account for the assessment under Article 6 para 3 Mw, as long as society as a whole benefits and there are appreciable objective advantages for consumers in the relevant market. In this case, even if the Emitters would have been worse off, ACM finds it likely that, based on a rough estimate, in such assessment under Article 6 para 3 Mw, the benefits for the consumers and society would outweigh the negative effects for the consumers.

The application of the fair share criterion does not lend itself for a quantitative estimation of costs and benefits in this specific scenario. Moreover, ACM considers that based on a rough estimate, the sustainability benefits clearly outweigh the costs, and the market share of the JMI is potentially below 30%, quantification of the benefits and costs is not necessary according to ACM's draft Guidelines.

c) Indispensability

In order to argue for the indispensability of the restrictions of competition to achieve the resulting benefits of the JMI, the Parties illustrated three counterfactual scenarios to the JMI which they deem not to be feasible. These counterfactuals are:

- (i) Individual infrastructure, both or one party unilaterally offering 5 MTPA of storage capacity;
- (ii) Individual infrastructure, each or one party offering unilaterally 2.5 MTPA of storage capacity; or
- (iii) Joint infrastructure, but each marketing 2.5 MTPA storage capacity separately.

The (i) first counterfactual is not feasible because the available supply of depleted gas fields owned by the Parties is limited. Neither of the Parties is currently independently able to reach 5 MTPA of storage capacity by relying on additional fields, without adding considerable costs and/or within the required time frame, as the other fields owned by the Parties are either: (i) too far away, (ii) still in gas production, or (iii) more complex to use so the operation would be more costly.

The (ii) second counterfactual also renders a negative business case for the Parties: the expected revenue would remain the same as under the JMI, but in this counterfactual both the investment and the risks would be much higher. The Parties submitted that they would not be able to earn the required return on investment to make this investment realistic. The only way in which the expected revenues would also increase would be by setting a much higher tariff, with negative effects on the Emitters and the commercial deployment of the wider CCS market.

Moreover, for both the first and second counterfactual, it is according to the Parties also relevant that, even in a hypothetical situation where each of the Parties had individual storage capacity of 5 MTPA available and/or could offer 2.5 MTPA individually at reasonable costs, the costs of constructing the infrastructure individually would result in a negative investment decision. By taking the investment together, the costs for the duplication of the infrastructure can be eliminated. Moreover, by jointly undertaking this investment decision, the Parties can both service the larger combined market (i.e. CO₂ in both forms) through multimodal infrastructure, rather than being limited and exposed by specialising in transporting one form only (i.e. gaseous or cryogenic CO₂).

Furthermore, the Parties submitted that Emitters want to be able to rely on the certainty that the CO₂ can continuously be shipped by tankers, compressed if needed, transported through the trunkline, and injected into the fields, without any interruptions. This level of assurance requires deep operational and financial resilience that could not be provided by either of the Parties individually during the start-up phase of such a complex project, according to the Parties. The financial risks, e.g. in case of CO₂ leakage, would be reduced by the increased redundancy in the system. Emitters are more likely to engage in CCS if suppliers of CCS services join forces, act as each other's back up in case of storage problems, and they are not dependent on a single storage operator (i.e. Shell or TTE acting alone). This increases the reliability of the CCS services and reflects the high risks involved, given the innovative nature and scale of Project Aramis,

the novelty and limited technical experience with CCS at this stage. In addition, having separate contracts would require more coordination, and would be less efficient and more costly for the Emitters.

The (iii) third counterfactual considers the situation in which the Parties would jointly develop the required infrastructure for transport, offering operational resilience, but market their initial 2.5 MTPA for storage separately. This would lead to separate commercial offers with differences in the final tariff to Emitters as the cost structure of the Parties for storage is not identical. Just like counterfactuals one and two, this counterfactual would hinder the reliability of CCS through risk-sharing between the Parties as they would consequently not automatically act as each other's backup for CO₂ volumes of both types if problems occur. Given the novel nature of the technology involved, this involves significant financial risks: if CO₂ leakage occurs the Parties will *inter alia* have to purchase compensating ETS rights. The Parties claim that (bilateral) contracting both to cover this risk for the Parties and to secure continuous CCS services would be impractical and more costly for Emitters. This counterfactual also makes it more onerous to accept CO₂ in both gaseous and cryogenic form and therefore makes the CCS services that can be offered less flexible both for the Parties and for Emitters.

Moreover, the Parties argue that the restrictions of competition involved in the JMI with regard to the joint pricing as part of the joint marketing are minimized in several ways. The JMI does not affect the options Emitters currently (in absence of the JMI) have for reducing their CO₂ emissions (e.g. buying ETS rights). This means that the level of the prices set by the Parties is constrained by these alternative options. In addition, as was set out above, the granting of the SDE++ subsidy is subject to a cost assessment, a comparison with other subsidy applicants and by a fixed ceiling on the amount of subsidy per ton CO₂. These checks ensure that in case the CCS offered by the JMI would turn out to be overly costly, it would not be used by Emitters. The MFN clause that will be included in the contract for – and at the request of – the Launching Emitters forms another guarantee according to the Parties. This in order to safeguard that if prices for transport and storage drop during the second (competitive) stage of Project Aramis, these Launching Emitters will be offered the same lower price and thus will not have to pay a price above the market price.

In relation to all three counterfactuals the Parties furthermore stress that there are relevant investments and risks on the Emitters' side as well. Emitters need to undertake significant investments in their own CO₂ capture infrastructure. In order to turn Project Aramis into a successful CCS project and to develop the CCS market more in general, Emitters need to have confidence in the JMI before signing up and committing towards RVO in order to be eligible for SDE++ subsidy. By joining both their development and marketing competencies and experience, the Parties believe they can mitigate Emitters' concerns as counterparties in committing to participate in such complex first-of-a-kind project. This may facilitate Emitters attracting/allocating their own investment in CO₂ capture and mitigates a potential first-mover disadvantage.

Hence, ACM finds that it is likely that the restrictions involved in the JMI, including the joint pricing, are indispensable to launch the initial pre-competitive phase of the JMI itself, and thereby for the feasibility of Project Aramis as a whole, including its subsequent competitive phase. It is plausible that these restrictions aim to address the risks and investments involved in order to help create a new market for integrated CCS services in the Netherlands, and are proportional to that purpose.

d) No elimination of competition

The JMI only concerns the first 5 MTPA of the total trunkline capacity of 22 MTPA. The Parties themselves intend to use [XXXXXX] of the total capacity, including the 5 MTPA of the JMI. In addition, ACM understands that the Dutch Mining Act and the CCS Directive require that fair, open and non-discriminatory access will be given to third parties for (part of) the remaining capacity.¹⁸ The remaining capacity in the project will accordingly be available on non-discriminatory terms to third parties that own depleted gas fields in the North Sea on the one hand, and to emitters on the other hand. It is likely that various parties will be interested in offering CCS services on this basis. The CCS capacity offered by Shell and TTE in addition to

¹⁸ See footnotes 6 and 14.

the JMI will be offered both in competition with each other and with such third parties. Moreover, the EEA-wide market for CCS is likely to grow, as a result of, inter alia, the explicit cross-border ambitions of Project Aramis itself, once barriers such as the London Protocol are lifted. ACM therefore accepts that there is no elimination of competition.

Conclusion

In accordance with its draft Guidelines, ACM has assessed the planned JMI based on the information that has been submitted by the Parties. Upon the initial analysis presented above, ACM concludes that if the planned agreement to set up the JMI restricts competition and the market shares of the Parties exceed 20%, it is nonetheless likely that the JMI meets all four criteria for the applicability of the legal exemption offered by Article 6, para 3 Mw and Article 101(3) TFEU. ACM concludes accordingly that at this point there is no need for further questions for the Parties with regard to the JMI.

This assessment of the JMI illustrates that arrangements between undertakings can help realize sustainability objectives in an effective manner, and contribute towards meeting national and international climate targets.

ACM notes that the current assessment solely applies to the JMI. At a later stage, the Parties envisage setting up a joint venture with the activity of exploiting the compressor and trunkline. The creation of this joint venture for Project Aramis will be notified separately for merger review at a later stage, if and when required. This assessment regarding the JMI does not prejudge the assessment of the joint venture under the rules for merger control by the competent competition authorit(y)(ies), and, as stated, ACM has decided to not further investigate the planned agreement based on the information that the Parties submitted to ACM.

ACM may assess the JMI again in more detail in the future, for example if a complaint against the agreement is filed. However, in line with our approach to sustainability agreements as set out in the Draft Guidelines, such an investigation will not be aimed at imposing sanctions, because the Parties have sought our preliminary view in this matter. This is based on the presumption that the Parties have made a *bona fide* effort to provide ACM the relevant information. Instead, our approach will be aimed at adjusting the initiative, if such would be necessary to secure its compatibility with the competition rules.

Yours sincerely,

the Netherlands Authority for Consumers and Markets,

Michiel Denkers MSc, MBA
Director
Competition Department