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24 August 2023

Mr Daniel McCracken-Hewson
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Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
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Mr Michael Drake
Director
Merger Investigations Branch
Australian Competition & Consumer Commission

Ms Tess Macrae
Director, Competition Exemptions Branch
Mergers, Exemptions & Digital Division
Australian Competition & Consumer Commission

By Email

Dear Mr McCracken-Hewson, Ms Macrae and Mr Drake

Brookfield and MidOcean application for merger authorisation for proposed acquisition of Origin Energy – second response to interested parties' submissions


Further to the Applicants' first response to the interested party submissions dated 28 July 2023, we refer to the additional non-confidential interested parties' submissions that have since been published on the ACCC's register as at 23 August 2023. This letter constitutes the Applicants' response to these submissions (**Second Response**).

The Applicants' Second Response is provided in **Annexure A** and **Annexure B** to this letter.

The Applicants request that the information highlighted in Annexure A and Annexure B be excluded from the public register. A schedule of confidentiality claim justifications is enclosed.

Public versions of both Annexure A and Annexure B are also enclosed for the purposes of publication on the ACCC's register.

Yours sincerely


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Annexure A

Brookfield LP and MidOcean Energy acquisition of Origin Energy Limited

Second Response by the Applicants to interested parties' submissions (24 August 2023)

1 Introduction

- 1.1 On 5 June 2023, Brookfield LP and MidOcean BidCo applied for merger authorisation (the **Application**) in connection with their proposed acquisition of Origin Energy Limited (the **Proposed Acquisition**).
- 1.2 The ACCC conducted a public consultation process in relation to the Application. On 28 July 2023, the Applicants provided its response to nine interested party submissions that had been uploaded onto the ACCC's website as at 27 July 2023 (**First Response**).
- 1.3 Since 27 July 2023, the ACCC has published further non-confidential versions of eight submissions received from interested parties (together, the **Submissions**), as well as two responses to an RFI issued by the ACCC, being one from Engie (**Engie Response**) and one from the Australian Energy Regulator (**AER Response**) (together, the **RFI Responses**).
- 1.4 This Second Response responds to the Submissions (other than the submissions from Telstra and Iberdrola) and RFI Responses (other than the submission from QGC, to which the Applicants have provided a separate response in Annexure B). Unless otherwise stated, capitalised terms used in this response have the same meaning as in the Application.
- 1.5 To the extent the Applicants have not responded to all matters raised in the Submissions or the RFI Responses, this should not be taken as acceptance of the positions asserted. If further submissions are published by the ACCC after 23 August 2023, then a further response may be provided by the Applicants.

2 ACEN record of oral submission dated 4 July 2023

A Offtake agreements

- 2.1 Paragraphs 4 to 7 of the record sets out ACEN's views on the difficulties with securing offtake agreements and PPAs. In particular, the record states:

[4] ACEN believes there are difficulties with securing offtake agreements and PPAs, particularly in relation to the different price expectations between generators and contractors. ACEN has been able to capitalise on merchant appetite to fund their generation projects over the longer term but securing revenue certainty in the long-term is difficult...

[5] ACEN notes that the difficulty getting a PPA for longer than 3 years without construction is an issue of price and return expectation...

[6] ACEN feels that the inability to secure long-term price certainty impacts the overall viability of developing long-term projects...

- 2.2 The Applicants agree that there are challenges in the PPA market. As noted at paragraphs 328 to 340 of the Application, a key challenge in the renewable development pathway is finding an offtaker that is willing to sign a long term PPA for the project offtake. A long term PPA will underwrite the project revenues and is typically both:
 - (a) a requirement of project finance lenders; and
 - (b) a strong preference for equity investors in making a final investment decision.

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- 2.3 As noted at paragraph 340 of the Application, in Brookfield's view, having a guaranteed offtaker in Origin Energy Markets will mitigate the risks and challenges in the PPA market for the green build-out plan. Origin Energy Markets' future load (36 TWh) is reasonably certain. Brookfield can therefore pursue a range of projects, with this target in mind, and balance the cost of its renewables build-out against the revenue from Origin Energy Markets' retail business.
- 2.4 By removing the need for a committed third party off-taker, the Proposed Acquisition will:
- (a) significantly simplify the commercial requirements for each project, resulting in a material acceleration of the timeline to reach financial close; and
 - (b) avoid the cost of complex negotiations in relation to risk allocation, legal documentation, and O&M agreements, and contract management, which represent significant 'friction costs' for the energy transition.
- 2.5 The Applicants also note that the Proposed Acquisition should not have a material adverse impact on other renewables developers, including those seeking to enter into PPAs. In particular, overall demand for new renewable generation is very high, there are a large number of companies developing renewable generation and storage in Australia, and Brookfield would be open to considering a PPA with a third party if such a PPA provided a more attractive return to Brookfield than building that capacity itself. See section 3.5(g) and in particular paragraph 436 of the Application for further details.

B Vertical integration

- 2.6 The Applicants agree with the stated advantage of vertical integration between generation and retail as described in paragraph 10 of the record, and further submit that this structure also facilitates greater renewables development, as discussed above at paragraphs 2.3 and 2.4 above.

C Renewable generation and future without the proposed transaction

- 2.7 Paragraphs 11 to 12 of the record note as follows:

[11] ACEN believes that, if the barrier to shifting the generation pool to renewables is a financial one, then Brookfield's claim that they are better positioned than other investors to lead Australia's energy transition is true... ACEN submits that between Origin's gas generation assets and Brookfield's proposed development in renewable generation, Brookfield would have a strong generation portfolio with firming capacity.

[12] ACEN notes that Origin has not developed any renewables projects for a long time, and if it is a financial barrier as Brookfield claims then Origin now has a vehicle to deliver that investment to the market and develop renewables.

- 2.8 The Applicants agree with these submissions, noting in particular Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin acknowledges that a challenge Origin faces in delivering its transition plan is the need for capital investment. Mr Lucas states (see paragraphs 47 and 48 of Anthony Lucas' statement dated 2 June 2023):

To achieve the shift to renewable and cleaner energy solutions at scale requires access to large volumes of capital for investing in large infrastructure assets. This becomes critical for scale investment.

... [F]or new projects, direct investment is preferable, as there is a limit to the scale of projects that can be underwritten with PPAs; and direct investment (as compared with underwriting projects using PPAs or otherwise obtaining third party financing) also decreases the complexity of projects and reduces uncertainty... Direct investment allows a more agile approach to undertaking the initial stage of a potential project... and this may mean, for example, that more potential projects could be investigated and progressed at early stages such that the impact of the failure of one project (for

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reasons of regulatory approval or otherwise) is reduced. Additionally, direct investment in and of itself may be a factor that makes the approvals process easier.

2.9 Paragraph 13 of the record states:

[13] ACEN also feels that Brookfield's global buying power and scale might put it in a better position than other developers to overcome global supply chain issues. It is difficult to attract investment without pursuing large projects, as suppliers won't quote for less viable smaller projects. ACEN noted an example in which a developer secured approval for building a wind farm, but manufacturers were not willing to supply the relevant materials due to its small scale. Brookfield may have monopsony power in global supply chains which would allow it to access those services more cheaply.

2.10 The Applicants agree with this submission. As noted at paragraphs 853 to 854 of the Application, Brookfield benefits from procurement scale advantage. It does not negotiate inputs on a per company, per project, or even per region basis. Brookfield negotiates on behalf of all existing and pipeline projects within the Brookfield group (solar, wind, batteries, EPC, etc). Brookfield is not immune to supply chain disruptions, but its strong relationships with suppliers means it feels them less. In particular, Brookfield's global relationships with key suppliers have delivered a range of benefits for its renewable projects including volume discounts, resilience, security of supply, access to competitive, long-term O&M terms and growth origination, responsive after-market support post fulfilment of the supply contract, as well as improved quality control.

2.11 Paragraphs 14 to 15 of the record states:

[14] ACEN believes the 14GW of generation and storage capacity proposed to be built out by Brookfield is reasonably significant in the context of the overall buildout required to shift the NEM to renewable generation. 14GW would be about 1/3 of what is required by the NEM by 2033. By way of comparison, NSW has committed to 12GW by 2030, but they need to be ahead of the market due to their coal-fired generators closing sooner.

*[15] ACEN submits it is difficult to determine if, in the absence of the acquisition, other investors would replace the proposed 14GW of investment in renewable generation. **The value of having a party like Brookfield willing to invest large amounts of capital in the transition is significant and it is a good thing for customers, the economy and reaching Australia's climate targets. There would be enough room for other players like ACEN to remain in the market and contribute their part, but the more renewable generation we can bring into the energy market the better.** (emphasis added)*

2.12 The Applicants agree with the above submissions.

2.13 Paragraph 17 of the record states, in relation to the key challenges in the overall transition described in paragraph 16 of the record:

ACEN notes these barriers may not stop projects altogether but do contribute to delays. They also note that the proposed buildout of 14GW of new generation would make curtailment and congestion risks worse unless addressed by government policy to support new connections and develop transmission capacity, but that the proposed investment would not inherently crowd out other investment in generation. ACEN feels a better way to address the greater risk of curtailment and congestion would be through implementing transmission access reform such as that proposed by the ESB, not by constraining Brookfield's investment in some way.

2.14 The Applicants agree that the Proposed Acquisition would not crowd out other investment, as noted above at paragraph 2.5. In relation to 'curtailment and congestion risk' being worse by the proposed 14 GW build-out unless addressed by government policy to support new connections and develop transmission capacity, the Applicants note that connection challenges will be unaffected by the Proposed Acquisition and that the development of new transmission capacity, including for REZs, is underway.

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D Competition issues

- 2.15 Paragraphs 18 to 23 of the record set out ACEN's submissions in relation to competition issues, in particular (own emphasis added):

*[18] ACEN finds it **unlikely that AusNet as an electricity TNSP and DNSP could discriminate against an electricity generator or retailer in Victoria, such as through delaying new connections. The connection process is relatively robust and transparent and delaying projects for non-technical reasons would be visible. The current rules and regulation in the market is likely to be sufficient** to prevent AusNet using its position as the network operator from advantaging its affiliate in Origin or disadvantaging competitors. (emphasis added)*

*[19] ACEN does not know of any issues with connecting to the transmission or distribution networks due to actual or perceived discrimination by AusNet. **The potential risk of discrimination is unlikely to deter ACEN or other generator/developers** from investing in renewables. (emphasis added)*

[20] ACEN is not concerned that AusNet would preferentially provide confidential information it gained as the transmission network operator to Origin, but that there would need to be sufficient ringfencing surrounding AusNet and Origin to manage the separation of the businesses.

- 2.16 The Applicants agree with the submission in paragraph 18. As noted in the Applicants' response to questions 3 to 5 of the ACCC's transparency letter dated 27 July 2023 (the **Transparency Letter**), AusNet has no ability to discriminate against Origin's generation or retail competitors given the existing regulatory framework in Victoria. The Applicant's agree with ACEN's submission that the '*connection process is relatively robust and transparent and delaying projects for non-technical reasons would be visible*'. Further, Brookfield has proposed a ring-fencing undertaking that would apply in addition to existing regulatory ring-fencing requirements to reinforce the separation between AusNet (transmission/distribution) and Origin (generation/retail).
- 2.17 Paragraph 21 of the record notes that ACEN is '*somewhat concerned by the concept of vertical integration of electricity distribution and retail given retailers are all connected to distribution networks, but distribution is not their area of expertise*'.
- 2.18 As noted in the Applicants' response to question 5 of the ACCC's Transparency Letter, AusNet distribution has no ability to discriminate against Origin's retail competitors in relation to both price and non-price aspects. The reasons why price discrimination would not be possible are discussed in more detail in section 9.2 (paragraphs 1145 to 1185) of the Application. Non-price discrimination is discussed in sections 9.3 to 9.7 (paragraphs 1186 to 1265 of the Application). In considering the above, it should also be borne in mind that AusNet owns only one of five Victorian distribution networks.

3 EnergyAustralia record of oral submission dated 4 July 2023

A Competition issues

- 3.1 Paragraph 5 of the record states:

EA see the main competition concern to be how well ring fenced the businesses are. There are existing regulations to ringfence transmission and distribution from retail and generation. It is important to EA that the risks that could arise from this are being addressed. Ensuring the ringfencing is working and is monitored is the major concern to ensure there are no unintended consequences.

- 3.2 As noted above at paragraphs 2.16 to 2.18, the existing regulatory framework to ring fence transmission and distribution from retail and generation is sufficiently robust, such that AusNet has no ability to discriminate against Origin's generation or retail competitors. The AER has recently made a rule change request to the AEMC looking to expand the scope of the transmission ring-fencing guidelines further, illustrating the ability for the regulatory regime to

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evolve in response to emerging issues. The ring-fencing required by the regulatory regime will be reinforced by Brookfield's proposed ring fencing undertaking to the ACCC.

Behind the meter competition

- 3.3 Paragraphs 6 to 9 of the record refer to EnergyAustralia's submissions in respect of behind the meter competition, noting it 'could be a concern if there is no ringfencing. If there was a cross pollination of data, Origin could offer customers in the AusNet area better behind the meter solutions due to the data that they would have access to through smart meter data from distributors.'
- 3.4 The Applicants submit that any potential cross pollination of data within Brookfield will not be possible, for the reasons discussed in section 7C below.

Smart metering competition

- 3.5 Paragraphs 10 to 11 of the record set out EnergyAustralia's submissions in respect of competition issues relating to smart metering. As noted at paragraph 1471 of the Application and as discussed in section 13 in greater detail, the Proposed Acquisition will have no effect on the supply of smart meters in the NEM (excluding Victoria) to the mass market, embedded networks or C&I customers. There will be no increase in Intellihub's share of volumes, and it will continue to be constrained by existing players in the smart metering market.

Connections

- 3.6 Paragraphs 14 and 15 of the record state (own emphasis added):

*[14] EA note if AusNet was to favour Origin it would be obvious given the number of parties trying to connect into the area. If Origin's projects always seem to be connected, or are always the successful ones, it would be noticed as the **generators all actively monitor who is doing what**. Generators would notice if some connections, especially of key competitors, were far quicker than theirs. (emphasis added)*

[15] EA note given the amount of generation needed to be built out it is not clear what would AusNet gain by clearly demonstrating a more favourable connection process for Origin. As they are a business, their incentive is to connect as many generators as possible.

- 3.7 The Applicants agree with the above submissions. See the Applicants' response to question 4 of the ACCC's Transparency Letter for further details.
- 3.8 Paragraph 16 of the record notes '*... discrimination could be more subtle - for example by getting preferential access to better locations on the network to connect to.*' As noted in the Applicants' response to question 4 of the ACCC's Transparency Letter, there is no potential for AusNet to discriminate against non-Origin generators in relation to connections, for five key reasons:
- (a) **First**, AEMO is the principal Transmission Network Service Provider (**TNSP**) involved in the connections process in Victoria. AEMO (and ultimately, VicGrid) – rather than AusNet – manages the transmission connection process and is the main point of contact for a connection application to the transmission network;
 - (b) **Second**, to the extent that AusNet is involved in the connection process, it is subject to detailed regulatory obligations that ensure it would not be able to discriminate against Origin's competitors in relation to connections, eg it must use reasonable endeavours to provide the connection applicant with an offer to connect in accordance with the reasonable requirements of the connection applicant, including the location of the proposed connection point and the level and standard of power transfer capability that the network will provide: clause 5.3.6(d), National Electricity Rules (**NER**);
 - (c) **Third**, negotiations in relation to negotiated transmission services are subject to a dispute resolution mechanism administered by the Australian Energy Regulator;

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- (d) **Fourth**, the close involvement of AEMO, the connecting generator and, potentially, another TNSP providing contestable connections means there is a high degree of visibility over the process. As EnergyAustralia observes (see paragraphs 3.6 and 3.7 above), any attempt by AusNet to deliberately delay a connection is likely to be apparent relatively quickly and be acted on, particularly by the relevant affected connecting generator;
- (e) **Fifth**, AusNet and Origin will remain separate companies, with separate management teams and separate owners (ie, separate Brookfield-managed funds, Brookfield business units and separate parties investing alongside the Brookfield funds). This will be reinforced by Brookfield's proposed ring-fencing undertaking.
- 3.9 In any event, as noted at paragraph 4.22 of the Applicants' response to the ACCC's Transparency Letter, AusNet is unlikely to possess any insight that may give Origin a meaningful competitive advantage over other generators on future connection opportunities. As set out in the statement of Thomas Hallam dated 26 May 2023, key relevant information relating to future connection opportunities in the Victorian electricity transmission network is held and published by AEMO.
- 3.10 This is also discussed further below in the context of the Engie Response in section 7A.
- B Public benefits**
- 3.11 Paragraph 25 of the record states (own emphasis added):
- EA believe if Brookfield doesn't invest the 13 GW of build out, it is still likely to happen, **however it is likely to be slower**. EA also flag that it may send a **negative signal to the market** if the transaction was not approved given the **much needed investment required in the market to get to net zero**. (emphasis added)*
- 3.12 The Applicants agree that Brookfield's investment is likely to result in the transition to net zero being accelerated. We also note that Brookfield's intention is to develop up to 14 GW of renewable generation and storage capacity, not 13 GW.
- 3.13 Paragraph 27 of the record states 'There are supply chain issues, especially with the battery projects. There are shortages of certain core elements' Brookfield is well placed to develop grid scale battery projects, including in the context of global supply chain issues.
- 3.14 Luke Edwards, Managing Director and Head of Australia – Renewable Power and Transition, Brookfield summarises Brookfield's global experience in developing battery storage at paragraph 98 of his statement dated 5 June 2023. Mr Edwards further notes at paragraph 99 of his statement:
- Brookfield is exploring long-term, strategic partnerships to facilitate further competitiveness in the supply of inputs to battery storage projects and security of supply for those inputs. In particular, the BGTF Consortium is exploring potential relationships with a range of global suppliers of... a long duration storage technology, as part of Brookfield's broader research into new technologies that could provide the NEM with cost effective long duration storage opportunities.*
- 3.15 Further, Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin acknowledges in relation to battery storage projects (see paragraph 80 of Anthony Lucas' statement dated 2 June 2023):
- As regards battery storage projects in particular, because of Brookfield's advantages of global scale and footprint, and due to its track-record of battery storage investments to date, I consider that Brookfield is likely to have a faster roll out plan than Origin, which would lead to more rapid deployment.*

4 Clean Energy Council record of oral submission dated 25 July 2023

A Transitioning the NEM to renewable energy sources and developing new projects

- 4.1 The CEC has noted that there are challenges or constraints in transitioning to renewable energy sources, being: (i) issues with viable places to connect renewable projects to transmission networks; (ii) issues with the connection process; (iii) factors affecting supply chain including access to key inputs and resources such as skilled personnel; and (iv) access to real time metering and consumption data.
- 4.2 The issues relating to transmission networks and the connection process are not affected by the Proposed Acquisition. They relate to well-known existing and future challenges in the NEM's transition to renewable energy sources, that arise irrespective of Brookfield's investment in Origin Energy Markets. As the CEC indicates, work is being undertaken to overcome these challenges – in particular work by AEMO to provide a more efficient connections process. The Applicants agree that AEMO's central role in managing the connection process is critical.

B Ability to discriminate against an electricity generator or retailer in Victoria

- 4.3 The CEC submission also makes comments in relation to AusNet's ability to discriminate against an electricity generator or retailer in Victoria.
- 4.4 **First**, the CEC states that AusNet's ability to discriminate depends on the effectiveness of the AER's Ring-fencing Guidelines. CEC notes the AER is currently in the process of developing a rule change request (which has now been submitted to the AEMC). The proposed amendments reflect the fact that the NER and Transmission Ring-fencing Guidelines can be amended to ensure they remain fit for purpose as new issues emerge.
- 4.5 The CEC submission further indicates that 'it may be challenging to obtain a comprehensive Australian perspective on AusNet's ability and incentive to discriminate against an electricity generator or retailer', as generators may be hesitant to share their experiences openly. The Applicants submit that the involvement of AEMO, the potential involvement of an independent transmission company building a contestable connection, and the availability of binding dispute resolution mean that discrimination is likely to be detectable and that there are avenues available for generators to address any such discrimination. CEC itself notes '*the role of impartial third parties (such as AEMO) in mediating negotiations between generators and TNSPs*'.

5 Anonymous record of oral submission dated 5 July 2023

A Renewable generation and future without the proposed transaction

- 5.1 Paragraph 2 of the record states:
- [Anonymous] does not believe that Brookfield is inherently better placed than any other investor, including Origin itself, to develop renewables. The renewable development field is specialised and requires a lot of understanding, particularly of the specific requirements of the Australian market.*
- 5.2 The Applicants disagree with this submission. The key point is that it is the **combination** of Brookfield's capital and expertise and Origin's structurally short electricity position that will make a difference. The Proposed Acquisition will see Origin transformed to a position where **Confidential to Brookfield: a significant majority** of its aggregate customer load requirements are met by renewables by 2033. That will not occur under the current ownership structure.
- 5.3 As noted at paragraph 6.23 of the First Response, Brookfield is well-placed to develop renewable generation for various reasons, including but not limited to, '*its exposure to the sector overseas and the ability to secure supply of components*'. Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin acknowledges this, noting '*Brookfield's global demand and scale is likely to mean that it can access supply chain arrangements and pricing that Origin is unable to match*': see paragraph 81 of Anthony Lucas' statement dated 2 June 2023.

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- 5.4 Brookfield is particularly better placed than Origin to achieve the green build-out plan under the Proposed Acquisition given the constraints that Origin currently faces as a publicly listed company. As noted at paragraph 6.16 of the First Response, the BGTF Consortium's green build-out plan involves the development of up to 14 GW of renewable generation and storage capacity by 2033 to meet the significant majority of Origin Energy Markets' aggregate customer load requirements. The plan is underpinned by a funding strategy, which will de-risk and accelerate Origin Energy Markets' new generation and storage projects in Australia: see section 6.10(b) of the Application.
- 5.5 There are two key aspects of this funding strategy. **First**, the BGTF Consortium's ability to take a longer term investment horizon (ie 10 years) and invest profits in renewable projects without the expectation, which Origin faces, of paying regular dividends to shareholders, and **second**, the BGTF Consortium's willingness to take development and construction risk, as well as its depth of construction expertise.
- 5.6 As a publicly listed company, it would not be realistic for Origin to pursue a similar strategy for its transition. As noted at paragraph 6.18 of the First Response, absent the Proposed Acquisition, Brookfield estimates that Origin would develop 4 GW of new renewable capacity by 2033 (based on recent practice), being 10 GW less than the up to 14 GW proposed under the BGTF Consortium's green build-out plan: see section 3.2.2 (paragraphs 357 and 362-365) of the Application.
- 5.7 Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin summarises the value that Brookfield brings to Origin under the Proposed Acquisition as follows (see paragraph 68 of Anthony Lucas' statement dated 2 June 2023):
- Brookfield ownership will provide greater access to capital, expertise and enhanced risk management. These benefits will give Origin better access to capital, talent and know-how, as well as a greater capacity to invest in renewable assets and to do so more rapidly than Origin could achieve on its own. Whilst Origin could achieve its transition objectives without Brookfield ownership, in my view, it would take longer, be more difficult to overcome the challenges explained above [in the statement]... and would likely result in a smaller renewables portfolio at a higher cost.*
- 5.8 Paragraph 2 of the record goes on to state:
- As a general observation, the challenge to Australia's transition to renewable generation is not a lack of capital, but the structural barriers that challenge the energy market... Simply putting more money towards the transition does not make Brookfield uniquely placed to deal with these challenges.*
- 5.9 The Applicants submit that the structural barriers that challenge the energy market will remain unaffected by the Proposed Acquisition. Further, the Applicants do not suggest that the Proposed Acquisition will be able to solve every challenge relating to the transition, but rather, it will make a significant contribution to it over the next decade, including by way of capital investment. The importance of further capital (including private capital) to achieve Australia's climate goals should not be understated. See paragraph 6.28 of the First Response for examples of several important statements that have been made about the unprecedented levels of capital investment that will be required to achieve Australia's energy transition.
- 5.10 At least in terms of Origin, Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin acknowledges that a challenge Origin faces in delivering its transition plan is the need for capital investment. Mr Lucas states (see paragraphs 47 and 48 of Anthony Lucas' statement dated 2 June 2023):
- To achieve the shift to renewable and cleaner energy solutions at scale requires access to large volumes of capital for investing in large infrastructure assets. This becomes critical for scale investment.*

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... [F]or new projects, direct investment is preferable, as there is a limit to the scale of projects that can be underwritten with PPAs; and direct investment (as compared with underwriting projects using PPAs or otherwise obtaining third party financing) also decreases the complexity of projects and reduces uncertainty... Direct investment allows a more agile approach to undertaking the initial stages of a potential project... and this may mean, for example, that more potential projects could be investigated and progressed at early stages such that the impact of the failure of one project (for reasons of regulatory approval or otherwise) is reduced. Additionally, direct investment in and of itself may be a factor that makes the approvals process easier.

- 5.11 Paragraph 4 of the record states 'If the acquisition proceeded, the development of other renewable generation would likely not be harmed', with which the Applicants agree, as further discussed above in paragraph 2.5.

B Off-take agreements and vertical integration

- 5.12 Paragraphs 7 and 9 of the record refer to some of the challenges in the PPA market. As set out above at paragraphs 2.1 to 2.5, the Applicants note these challenges and therefore the value of having a guaranteed offtaker (in the form of the Origin Energy Markets customer base) to develop renewables.

C Renewable buildout

- 5.13 Paragraph 10 of the record notes:

The proposed 14 GW investment in new generation is significant to the energy transition, but is a challenging target to reach. [Redacted]. Based on what has been achieved in the Australian market over a similar time horizon to-date, it will be challenging for a single company to achieve 14 GW of new generation by 2033, and would likely need to be supported by measures such as project acquisitions.

- 5.14 The Applicants acknowledge that developing up to 14 GW of new renewable generation and storage by 2033 may be considered an ambitious target. Origin under BGTF Consortium ownership will develop up to 14 GW through a combination of greenfield projects, including land acquisition, and acquiring and supporting early stage projects that may otherwise be unable to proceed. Brookfield is strongly financially and reputationally incentivised to achieve this build-out. As noted at paragraph 4.2 of the First Response:

- (a) **BGTF is a closed-end fund:** BGTF will sell the Origin Energy Markets business at the end of a 10-12 year investment horizon. A higher price is expected if the Origin Energy Markets business has been successfully transformed in the manner contemplated than if it had not. The size of BGTF's return to investors is dependent on the proposed investment in the green build-out – the greater the build-out, the higher the return;
- (b) **BGTF has been established specifically to fund a successful transition to renewables:** it has dual objectives – to achieve attractive risk adjusted financial returns and to generate measurable environmental change. 'Additionality' is a key requirement of BGTF's investment, which can only be achieved through the green build-out. Only by funding the green build-out will BGTF achieve this second objective;
- (c) **Brookfield's broader success is dependent on the success of its funds achieving their stated objectives:** Brookfield's reputation and ability to attract future investment depends on BGTF, including through its investment in the Origin Energy Markets, achieving its dual financial return and environmental transition objectives; and
- (d) **Brookfield's co-underwriters,** GIC and Temasek, are investing with the same dual objectives.

- 5.15 See paragraphs 859 to 873 of the Application for further details.

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D Transmission networks and ringfencing

- 5.16 Paragraphs 17 and 18 of the record refer to concerns in relation to the efficacy of transmission ringfencing and the possibility for AusNet or any TNSP/DNSP to discriminate against a particular generator. In particular, paragraph 18 states:

The process of approving a connection application is opaque, and that the Applicants' submission regarding regulation and AEMO's neutral presence are not sufficient to address grey areas surrounding delays, subjective judgments and information asymmetries. TNSPs have a lot of power in the relationship with generators and it is difficult especially for smaller players to push back on delays and projects which have been frustrated.

- 5.17 The Applicants disagree with this submission. As noted at paragraph 3.8, there is no potential for AusNet to discriminate against non-Origin generators in relation to connections. Specifically in relation to delays, subjective judgments and information asymmetries, as further discussed in paragraph 7.8 below, AusNet must prepare a negotiating framework that sets out procedures for negotiating terms and conditions of access, which framework is reviewed and approved by the AER. The framework includes provisions requiring good faith negotiations, the provision of all commercial information reasonably required by a generator, a reasonable period of time for commencing, progressing and finalising negotiations, and a process for dispute resolution that complies with the NER: see NER rule 6A.9.5.

- 5.18 Paragraph 19 of the record states:

Practically it is very challenging to reform the ringfencing measures to make them effective. They feel that the starting point proposed by the AER as to more reporting is not the answer, as this represents a cost to businesses and does not address the difficulty of identifying where discrimination is being carried out. Many of the issues arise because of proximity of staff and the natural movement of people between affiliated entities.

- 5.19 As discussed further at paragraphs 7.11 to 7.13, the AER has submitted a rule change request to the AEMC, which will result in the application of transmission ring fencing guidelines to connection services. This illustrates the potential for transmission ring-fencing guidelines to evolve to address any issues that might emerge. Brookfield's proposed ring-fencing undertaking will further reinforce the transmission ring-fencing guidelines, by ensuring the separation of not only AusNet and Origin but also Brookfield Infrastructure and Brookfield Renewables in relation to the management of AusNet and Origin respectively.

- 5.20 Paragraph 20 of the record states:

In the short-term it would be difficult to detect if AusNet was giving favourable treatment to Origin. They submit that over the longer term it would be discernible from, for example, the number of their projects connecting to the grid and the timelines on which their projects were progressing. This would emerge from key connection reporting data and application timings, but it would take time for any pattern to become evident.

- 5.21 The Applicants disagree with this submission for the reasons set out above in paragraph 3.8. We note that the Submission in this regard is contrary to comments made by both ACEN and EnergyAustralia.

6 Roger Fyfe submission dated 28 July 2023

- 6.1 The submission states '*Do companies whose business model is based on taking businesses private after taking them over, do so because it increases their ability to generate a "Public Benefit"? I think not.*

- 6.2 The Applicants disagree with the framing of Brookfield's business model in this way. BGTF has been established specifically to fund a successful transition to renewables: it has dual objectives - to achieve attractive risk adjusted financial returns and to generate measurable

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environmental change. This involves transforming carbon-intensive businesses, including by reducing their greenhouse gas emissions and increasing low-carbon energy capacity. Brookfield's rationale for the Proposed Acquisition is discussed further at paragraphs 12 to 13 of the Application.

7 Engie response to ACCC RFI dated 19 July 2023

7.1 Engie states that the intent of their submission *'is not to opine on the merits of the application but to encourage appropriate consideration of relevant risks, and where necessary appropriate measures and conditions, so as to ameliorate the concerns of industry. In fact, Engie itself has network interests in other countries where those ownership interests are fully regulated, tightly ring fenced and closely oversighted by the regulator'*.

7.2 The relevant risks raised by Engie are discussed in turn below.

A Ability, likely impact and incentives of a vertically integrated electricity generation and transmission network business discriminating against its generation competitors

7.3 The Engie Response focusses primarily on the potential for discrimination in relation to the timing and pricing of connection services, although a reference is also made to outage planning. Both connections and outage planning are discussed in turn below.

Connections

Pricing of connection services

7.4 The pricing and selection of providers of contestable connection services is determined through competitive tender or other market processes, meaning discrimination in relation to the pricing of such services by AusNet would not be possible (see Application, paragraphs 1008 to 1012).

7.5 The pricing of non-contestable connection services is regulated through what is essentially a negotiate / arbitrate regime under the NER, again meaning discrimination is not possible (see Application, paragraphs 997 to 1007; expert report of Greg Houston, paragraphs 199 to 212; and statement of Thomas Hallam, paragraphs 31 to 39).

7.6 In summary, in negotiating the prices that are to be charged for negotiated transmission services, AusNet must apply 'negotiated transmission service criteria' set by the AER as part of its five yearly transmission determination. Those negotiated transmission service criteria must in turn give effect to and be consistent with negotiated transmission service principles set out in clause 6A.9.1 of the NER (Version 109). The negotiated transmission service criteria must also be applied by any commercial arbitrator in resolving a dispute. The negotiated transmission service principles set out in the NER include a requirement that the price for a negotiated transmission service:

- (a) should be based on the costs incurred in providing that service, determined in accordance with the principles and policies set out in the cost allocation methodology for the relevant TNSP. The AER has approved AusNet's cost allocation methodology and any future amendment would require AER approval;
- (b) should be at least equal to the avoided cost of providing the negotiated connection service, but no more than the cost of providing it on a standalone basis;
- (c) must be the same for all transmission network users, unless there is a material difference in the cost of providing the negotiated transmission service to different users;
- (d) should be subject to adjustment over time to the extent that the assets used to provide that service are subsequently used to provide services to another person; and

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(e) should be such as to enable the TNSP to recover the efficient costs of complying with all regulatory obligations or requirements associated with the provision of the negotiated transmission service.

7.7 The requirement that prices be based on costs and must be the same for all transmission network users unless there is a material difference in cost, combined with the central role of AEMO in the process and the availability of binding dispute resolution would remove any ability to discriminate on price.

Timing and quality of connection services

7.8 AusNet must prepare a negotiating framework that sets out procedures for negotiating terms and conditions of access, which framework is reviewed and approved by the AER. The framework includes provisions requiring good faith negotiations, the provision of all commercial information reasonably required by a generator, a reasonable period of time for commencing, progressing and finalising negotiations, with requirements for each party to use reasonable endeavours to adhere to those timelines, and a process for dispute resolution that complies with the NER: see NER rule 6A.9.5.

7.9 In addition, there are a number of obligations imposed on AusNet by rule 5.3 of the NER (that have not been disapplied in Victoria) requiring AusNet to provide necessary technical information, to make an offer to connect that is fair and reasonable, and to use reasonable endeavours to make an offer in accordance with the applicant's reasonable requirements, including location and standard of power transfer capability. There are also obligations contained in AusNet's transmission licence.

7.10 The central role of AEMO in relation to connections in Victoria described to the ACCC previously, coupled with the negotiating framework and obligations referred to above and the availability of binding dispute resolution, would remove any ability to discriminate in relation to the timing or quality of connections. See Application, paragraphs 1003 to 1005 and 1013 to 1024; expert report of Greg Houston, paragraphs 201 to 205 and 253 to 256; statement of Thomas Hallam, paragraphs 31 to 39 and 44 to 53 and the Applicants' response to the ACCC's Transparency Letter, paragraphs 4.1 to 4.28 for further details.

AER rule change request

7.11 The Engie Response notes that there are broad concerns *'that the competitive and non competitive arms of network businesses are not sufficiently ring fenced'*. As the ACCC will be aware, in response to such concerns, on 26 July 2023 the AER submitted a rule change request to the AEMC. The AER has proposed that the NERs be amended to include negotiated transmission services within the scope of the Transmission Ring fencing Guidelines.

7.12 The proposed amendment would address a concern that negotiated transmission services, which are provided on an exclusive basis by electricity TNSPs, are not subject to the Transmission Ring-fencing Guidelines. The potential harm arising from this gap is the potential for TNSPs to discriminate in favour of themselves or an affiliate when providing non-regulated transmission services as a result of their monopoly provision of negotiated transmission services. Including negotiated transmission services within the scope of the Transmission Ring-fencing Guideline would provide the AER with additional regulatory tools to manage the potential harms associated with possible discriminatory behaviour and would provide greater transparency for connection applicants and third party service providers.

7.13 The particular concern that has prompted the proposed rule change relates to network service providers bundling contestable and non-contestable connection services and discriminating against generators who do not require all services from the network service provider in question. This concern is unrelated to the Proposed Acquisition. The effect of the rule change, however,

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would be to allow the AER to revise the Transmission Ring fencing Guidelines so they applied more generally to negotiated transmission services. For example, the non-discrimination provision contained within the Transmission Ring fencing Guidelines could, following the requested rule change, be applied to negotiated transmission services including non-contestable connection services. The effect of this would be to reinforce the effect of the regime described above in preventing AusNet discrimination against non-Origin generators in relation to connection services.

- 7.14 The Engie Response also refers to a Ministerial Council of Energy Consultation Regulation Impact Statement dated 11 August 2011. We note that that statement is 12 years old and that the blanket prohibition of co-ownership of generation and transmission discussed in that document as one option was not implemented. As discussed in detail in the Application and other documents provided to the ACCC by the Applicants, the regulatory regime applying in Victoria and the role of AEMO in Victoria mean a transmission owner could not in any event discriminate in favour of generator. As illustrated by the AER's latest rule change proposal, the regulatory regime can and does evolve to address any possible emerging issues.

Outages

- 7.15 The Engie Response suggests that there is a perceived risk that network businesses could schedule transmission outages to benefit a related generation business. In fact, any planned outage must be approved by AEMO. It is implausible to suggest that AEMO would approve a generation outage that was designed to benefit a related generation business (see Application, paragraphs 1066 to 1073; and statement of Thomas Hallam, paragraphs 75 to 81).

B Ability, likely impact and incentives of a vertically integrated electricity retail and distribution network business discriminating against its retail competitors

- 7.16 The Engie Response first notes that vertically integrated distribution network businesses would be required to comply with distribution ring fencing obligations. As the ACCC is aware, the Distribution Ring-fencing Guidelines include a range of mechanisms to ensure compliance and allow the AER to identify and act in response to non-compliance. DNSPs must, amongst other things, submit an annual ring fencing compliance report to the ACCC and have that compliance report independently verified by a qualified independent auditor. The AER can also require a distribution network service provider to provide a written response to any complaint or concern the AER raises. There are a number of enforcement tools available to the AER in the event of non-compliance, including infringement notices, court enforceable undertakings and civil proceedings (see Application, paragraphs 1262 to 1265).
- 7.17 The Engie Response then outlines possible harms that could arise *if* discrimination was possible. The submission makes it very clear, however, that "*there are regulations in place to specifically prevent network businesses from discriminating in this manner*". The mechanisms that prevent such discrimination include not only the Distribution Ring-fencing Guidelines but also the fact that all distribution 'direct control services', including connection services, are price regulated by the AER, the detailed regulatory requirements in relation to connection times and offers, the detailed regulation of safety and maintenance matters, the geographic dispersal of retail customers across AusNet's distribution network and the fact that AusNet is only one of five Victorian electricity distribution networks (see Application, Chapter 9; expert report of Greg Houston, Chapter 5; and statement of Thomas Hallam, section 4, paragraphs 90 to 148).

C Ability, likely impact and incentives of a vertically integrated electricity retail, distribution network and smart meter business discriminating against its retail or smart meter competitors

Strong competition in smart meter industry

7.18 The Engie Response makes observations about the state of competition in the smart metering industry, namely:

Engie considers that the market for behind-the-meter and smart meter services is currently competitive and is unlikely to be significantly impacted by Intellihub having shared ownership with a generation and retail business.

7.19 The Applicants agree with Engie's observation that the smart meter industry is competitive and unlikely to be impacted by the Proposed Acquisition.

Intellihub has no ability or incentive to provide Origin with lower prices or better services

7.20 The Engie Response states that '*[t]he main opportunity for the vertically integrated business to discriminate against its retail competitors is through providing itself with lower metering-related prices and better service response than provided to its retail competitors*'.

7.21 The submission goes on to state that:

if the vertically integrated business were able to discriminate against its retail competitors in relation to smart metering services, we expect that this would involve:

(a) *Preferential service order pricing (including, preferential treatment when it comes to the payment of invoices – including late payment); and*

(b) *Preferential service order response and priority.*

7.22 Finally, the Engie Response states that:

Intellihub may have incentives to set relatively higher prices for retail competitors, which are maintained at a level that does not sufficiently incentivise these retail competitors to replace the Intellihub meter with a competing suppliers' meter. That is, Intellihub could seek to maintain its profitability by cross subsidising any price reductions to itself through higher prices to its retail competitors... Nonetheless, as metering costs are not currently a significant proportion of the total cost of supplying retail energy services, any undue advantage is unlikely to significantly distort the market

7.23 Several points need to be made in relation to these statements.

7.24 **First**, as identified by Engie and addressed in paragraph 7.18 above, the smart metering industry is highly competitive. Intellihub does not have the ability to discriminate against Origin's rivals in the retail business because it does not have market power. It is only one of a number of suppliers of smart meters in Australia and faces significant competitive constraint from suppliers like Vector, Yurika, Spotless, PlusES and others. The level of competition in the supply of smart meters and related services in Australia is high.

7.25 Smart meter providers tender vigorously to win volumes from energy retailers. Pricing is often a very important aspect of any negotiation with the energy retailer. The consequence of not providing the best possible terms (pricing and service) could result in a long term loss in business (noting the infrequent nature of these tenders). Energy retailers have significant countervailing buyer power and operate sophisticated tender processes often awarding significant volumes (maximising the lumpiness of tenders and requiring metering providers to offer highly attractive terms) while also reserving the right to multisource.

7.26 **Second**, in relation to existing contracts to supply and install smart meters, the contracts entered into between Intellihub and other retailers would protect those retailers against discrimination by Intellihub. Intellihub has existing agreements in place with each of its retailer customers that

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govern: (i) the number of smart meters to be deployed, and by when; (ii) its maintenance obligations, including how quickly repairs need to be made; and (iii) the level of data generated, and how that must be conveyed to the retailer. In practice, this means that Intellihub cannot favour Origin smart meter connections to the detriment of Origin's competitors or reduce the quality of its offering to Origin's competitors, as this will be in contravention of its existing contractual obligations.

- 7.27 **Third**, Intellihub operates a business-to-business (**B2B**) model which is agnostic as to the identity of the energy retailer, with a strategic focus on servicing energy retailers rather than end customers. Intellihub cannot favour one customer over another as its operating system is not designed to differentiate between service orders. When, for example, a request for the installation of a new smart meter comes in, or a request for maintenance, the request is automatically logged in Intellihub's system in the order in which it is received. The system does not differentiate between requests from different energy retailers.
- 7.28 **Fourth**, Origin is only one of Intellihub's customers. The majority of Intellihub's Australia revenue is not derived from servicing Origin. The percentage of Intellihub's Australian revenue that is derived from servicing Origin is also gradually trending down due to the diversification of Intellihub's customer base. If Intellihub sought to discriminate against its existing customer base by reducing the quality of its offering or increasing its prices, it would risk losing the majority of its existing revenue stream. Intellihub does not have the ability to refuse to supply or to discriminate against Origin's retail competitors without causing detriment to its own business as that energy retailer would simply purchase smart meters from an alternative supplier.
- 7.29 **Finally**, Intellihub's lack of any ability or incentive to discriminate against Origin's retail competitors is reinforced by their different ownership. The Intellihub and Origin interests will be held in different Brookfield funds, in separate business units, each with their own separate boards and management teams. Intellihub is managed day-to-day at the portfolio company level without the involvement of Brookfield. Detailed information about the separation between Brookfield's Infrastructure business unit and Renewable Power and Transmission business unit is set out in section 1A of the Applicant's response to the ACCC's Transparency Letter. Furthermore, Brookfield is constrained by PEP (the other shareholder in Intellihub). PEP would not approve any decision for Intellihub to preference Origin in circumstances where doing so would reduce Intellihub's profits or otherwise harm Intellihub.

Intellihub has no ability or incentive to provide Origin with access to other retailers' confidential information

- 7.30 The Engie Response states that *'[t]he benefits of holding a metering business would likely be the analytical insights that exten[d] to other retailers' customers. Engie assumes limits on sharing this information would be appropriately enforced'*
- 7.31 The Applicants confirm that Engie's assumption that limits on sharing information obtained by Intellihub will be appropriately enforced is correct. No confidential information is (or will be) shared by Intellihub between energy retailers.
- 7.32 **First**, as set out in section 6A of the Applicant's response to the ACCC's Transparency Letter, it is worth noting at the outset that Intellihub has access to **limited information** in its role as Metering Coordinator, Metering Provider and Metering Data Provider. The end customer information that Intellihub is provided by the energy retailer is typically process related, or consists of information that Intellihub is required to collect, deliver and retain in accordance with Chapter 7 of the NER.
- (a) Metering Data Providers are required to collate and provide 'metering data' and 'NMI standing data' to the Market Settlement and Transfer Solutions (**MSATS**) system, which

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is maintained and administered by AEMO. Energy retailers (including Origin) cannot access any data stored on MSATS unless approved by AEMO. Similarly, Metering Data Providers, Metering Coordinators and Metering Providers cannot access data unless they are permitted to do so by AEMO.

- (b) Separate to the MSATS system maintained and administered by AEMO, Metering Data Providers are required under the NER to retain 'Metering Data' and 'NMI Standing Data' in their own databases. Clause 7.10.1(8) of the NER requires Metering Data Providers to protect the 'Metering Data' from third party access, and limit access in accordance with the rules in the NER. If a third party requests access to the 'Metering Data' in Intellihub's database, Intellihub will only approve that request if the person is entitled to view the data in accordance with the NER. Intellihub is not legally permitted to share any 'Metering Data' with an energy retailer that does not have an end relationship with that customer (including Origin). Intellihub is also not legally permitted to share the 'Metering Data' with any of its shareholders or subsidiaries (as permission to access the 'Metering Data' is limited to the Metering Coordinator itself, or the Metering Provider or Metering Data Provider).

7.33 **Second**, Intellihub maintains strict internal protocols that limit the number of Intellihub personnel that can access the data stored in its database. Only Intellihub employees that hold operational roles and need access to the data in order to perform their functions, are able to access the data. Any requests for access to this data must be lodged with Intellihub's IT team which only approves requests for operational team members where appropriate. Only authorised employees within Intellihub have access to the database. No persons at shareholder or executive level (including within PEP and/or Brookfield) have access to this data. This would contravene Intellihub's internal policies, as well as the relevant clauses in the NER.

7.34 **Finally**, Intellihub's customer contracts with various energy retailers contain provisions that would prevent Intellihub providing a retailer's commercially sensitive information to Origin. Aside from being bound by privacy laws, the contracts commonly contain a confidentiality clause requiring a retailer's confidential information to be kept confidential by Intellihub. Further information about Intellihub's requirements under its customer contracts is set out in Part 13.3 of the Application.

Future competitive dynamics

7.35 The Engie Response states that *'If Intellihub smart meters were to become more ubiquitous and alternative suppliers were to exit the market, the advantage to this shared ownership may become more significant'*.

7.36 The Applicants submit that there is no evidence that Intellihub's smart meters will become more ubiquitous in the market or that any smart meter providers will exit the industry going forward.

7.37 **First**, as discussed at paragraphs 7.24 to 7.25, the smart meter industry is highly competitive. There are a number of other suppliers of smart meters and related services to energy retailers for deployment across the mass market including Vector,¹ Spotless,² Yurika,³ PlusES,⁴ Metropolis⁵ and others. A summary of Intellihub's three largest competitors is provided below.

- (a) **Vector:** Vector has installed more than 2 million advanced meters across both Australia and New Zealand, with 528,000 advanced meters installed in Australia as at 31 December 2022.⁶ Vector cites its customers as some of Australia and New Zealand's

¹ Vector Metering, *Metering Solutions for a new energy future* <<https://vectormetering.com/au/>>.

² Spotless, *Integrated facilities services* <<https://www.spotless.com/>>.

³ Yurika, *Connecting Australians to a sustainable energy future* <<https://www.yurika.com.au/>>.

⁴ Pluses, *Enabling businesses to build out future communities* <<https://pluses.com.au/>>.

⁵ Metropolis, *What we do* <<https://www.metropolis.net.au/>>.

⁶ Vector, *Market release – Vector announces solid half year results* (21 February 2023) p 6 <<https://blob-static.vector.co.nz/blob/vector/media/news-articles/04-vct-vector-announces-solid-half-year-results.pdf>>.

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'leading electricity and gas retailers',⁷ with services offered for both residential and small business customers.

- (b) **Yurika:** Yurika has installed more than 500,000 meters across the NEM for residential, commercial and industrial customers.⁸ Yurika cites long-standing partnerships with customers including Coles, Wesfarmers, McDonald's, the South Australian government, and Boral. Yurika has also recently entered into metering service agreements with a number of energy retailers including Ergon Retail, Telstra, Next Business Energy, and Iberdrola.⁹
- (c) **PLUS ES:** By 2022, PLUS ES had installed more than 1 million meters across the NEM,¹⁰ and works in partnership with utilities providers to collect, store and deliver data services for more than 2.5 million meters.¹¹ PLUS ES cites its customers as 'Australia's leading energy retailers, brokers and consultants', as well as direct commercial customers including utilities, embedded network operators and infrastructure owners.¹²

7.38 The Proposed Acquisition will have no effect on the supply of smart meters in the NEM (excluding Victoria) to the mass market, embedded networks or the C&I customers. There will be no increase in Intellihub's share of volumes, and it will continue to be constrained by existing players including Vector, Yurika, Spotless, PlusES and others.

7.39 **Second**, there are a significant number of smart meter volumes that remain uncontracted and contestable to 2030. The available volumes are more likely to encourage new entrants, than result in the exit of strong, established players.

7.40 As mentioned at paragraphs 6.13 to 6.16 of the Applicants' response to the ACCC's Transparency Letter, it is estimated that, if a 100% penetration rate in respect of mass market smart meters is to be achieved by 2030 across the NEM (excluding Victoria), approximately ~8.3 million smart meters will need to be installed. With the current smart meter rollout sitting at approximately 30% across the NEM (excluding Victoria), approximately 2.4 million smart meters have been deployed in the mass market to date. This leaves ~5.9 million contestable smart meters to still be installed to 2030. It is estimated that approximately 50% of this volume has already been contracted to smart meter providers. This leaves approximately 3 million uncontracted and contestable smart meters to 2030.

7.41 These volumes will be hotly contested. Energy retailers typically hold tenders to award mass market smart meter deployment contracts, with smart meter providers – of which there are no fewer than 6 other independent suppliers in Australia (as outlined above) – competing vigorously to win volumes. The infrequent and periodic nature of competition, with competitive tenders structured to produce high levels of competition involving multiple metering service providers, and with sophisticated buyers (being the electricity retailers) which possess high levels of countervailing power, mean that Intellihub is not guaranteed to win any of these volumes.

8 AER response to ACCC RFI dated 9 August 2023

8.1 The AER Response is largely a factual description of the regulatory regime, in respect of which the Applicants have no comments. There are, however, two opinions expressed by the AER that the Applicants wish to respond to.

⁷ Vector Metering, *Metering solutions for a new energy future* <<https://vectormetering.com/au/>>.

⁸ Yurika, *Our approach* <<https://www.yurika.com.au/our-approach/>>.

⁹ Energy Queensland, *Annual Report 2021-22* (19 August 2022) <https://www.energyq.com.au/_data/assets/pdf_file/0019/1030834/EQL-Annual-Report-2021-22_DIGITAL.pdf>.

¹⁰ PLUS ES, *PLUS ES installs one millionth meter two years ahead of schedule* <<https://pluses.com.au/plus-es-installs-one-millionth-meter-two-years-ahead-of-schedule/>>.

¹¹ PLUS ES, *PLUS ES Utility Services* <<https://pluses.com.au/utility-services/>>.

¹² PLUS ES, *Metering* <<https://pluses.com.au/metering/>>.

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- 8.2 First, the AER asserts that AEMO's role as a Victorian TNSP would not prevent AusNet creating delays in connection or discriminating in favour of affiliates in relation to connections. No explanation is provided for this statement. The AER does not respond to the explanations of why such discrimination is not possible set out in both the Application and the expert report of Greg Houston . Those explanations are summarised at paragraph 3.8 above in the context of the EnergyAustralia submission.
- 8.3 The only reason given by the AER for this statement appears to be an assumption that connecting parties may not feel comfortable to pursue remedies because of a need to maintain a commercial relationship with the TNSPs. In the Applicants' view, there is no basis to assume connecting parties would not be prepared to use the dispute resolution mechanisms if there was discrimination against them by AusNet. Connections are, of course, critical to any new generation project meaning there is a strong incentive for a connecting party to challenge any perceived discriminatory behaviour. Many entities will only have one project they need to connect to the AusNet system, removing much of the risk that a need for ongoing commercial relationships may inhibit parties triggering a dispute. The customers of TNSPs are, in the AER's words, '*typically large, sophisticated corporate entities*', particularly those seeking to have multiple generation projects connected to the AusNet system. It should also be borne in mind that the contestability regime in Victoria means that AusNet must also maintain a good relationship with those seeking to connect to its network if it wishes to win contestable connection work. In combination, these factors suggest there is no reason to assume the dispute resolution mechanisms in the NER would not be used by connecting generators in the (most unlikely) event of discrimination.
- 8.4 The Applicants also note that:
- (a) the AER has proposed a rule change to the AEMC to ensure that Transmission Ring Fencing Guidelines can apply to negotiated services, including connection services, to help address any potential for discrimination in relation to connections; and
 - (b) the Applicants have proposed an undertaking to the ACCC to reinforce the separation of AusNet and Origin and their management by Brookfield Infrastructure and Brookfield Renewable respectively.
- 8.5 Second, the AER suggests that AEMO's role would not prevent AusNet operating the AusNet transmission network to favour its affiliates. Again, no example of how this could occur is given and no attempt is made to explain why such discrimination would be possible, notwithstanding the points raised in the Application and the expert report of Greg Houston . We refer in particular to paragraphs 1041 to 1078 of the Application and paragraphs 214 to 252 of the expert report of Greg Houston.

Annexure B

Brookfield LP and MidOcean Energy acquisition of Origin Energy Limited

Response by the Applicants to QGC submission (24 August 2023)

1 Introduction

- 1.1 On 5 June 2023, Brookfield LP and MidOcean BidCo applied for merger authorisation (the **Application**) in connection with their proposed acquisition of Origin Energy Limited (the **Proposed Acquisition**).
- 1.2 The ACCC conducted a public consultation process in relation to the Application. On 28 July 2023, the Applicants provided its response to nine interested party submissions that had been uploaded onto the ACCC's website as at 27 July 2023 (**First Response**).
- 1.3 Since 27 July 2023, the ACCC has published further non-confidential versions of eight submissions received from interested parties (together, the **Submissions**). This document responds to the submission from QGC. Unless otherwise stated, capitalised terms used in this response have the same meaning as in the Application.
- 1.4 To the extent the Applicants have not responded to all matters raised in the QGC submission, this should not be taken as acceptance of the positions asserted. If further submissions are published by the ACCC after 23 August 2023, then a further response may be provided by the Applicants.

2 QGC submission dated 10 August 2023

- 2.1 As already noted by the Applicants:
 - (a) MidOcean has agreed to acquire a 1.25% interest in the QCLNG Project from Tokyo Gas;
 - (b) Origin Energy currently holds a 27.5% interest in the APLNG Project;
 - (c) MidOcean has agreed to divest a 2.49% interest in the APLNG Project to ConocoPhillips immediately upon its acquisition of Origin Energy,

such that post-completion of the acquisition of Origin Energy Limited, MidOcean anticipates it will hold a 25.01% interest in APLNG and a 1.25% interest in QCLNG.

A MidOcean will not be responsible for marketing gas (either for itself or either project)

- 2.2 Both interests are non-controlling minority interests.
- 2.3 MidOcean will also not be responsible for day to day marketing of natural gas in the East Coast gas market for either project, with:
 - (a) all participants in QCLNG being obliged to sell all gas produced to Walloons Coal Seam Gas Company Pty Limited (**Walloons**) (which is owned by Shell 75% and CNOOC 25% with Tokyo Gas/MidOcean having no ownership or rights to participate in Walloons decision making); and
 - (b) **Confidential to MidOcean Energy**.
- 2.4 We (and QGC) have confirmed that the Walloons arrangements will continue unaltered following MidOcean's acquisition from Tokyo Gas. **Confidential to MidOcean Energy**
- 2.5 Accordingly, it is clear that MidOcean will not be in a position to control the natural gas marketing of each project, irrespective of the information it has.
- 2.6 Similarly it is Walloons which is responsible for buying of third party gas (including from APLNG), such that again MidOcean is not in position to control such acquisitions.

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B No access to customer and pricing information (other than net proceeds on an aggregated monthly basis)

- 2.7 In any case, MidOcean considers QGC submission substantially overstates the information that MidOcean is entitled to with respect to the QCLNG project. Based on the due diligence it has conducted of the Tokyo gas interest, MidOcean does not agree with QGC's assertion that it will have visibility over sensitive price information and access to all gas sales agreements. Rather, the outcomes of MidOcean's due diligence indicate it will have no contractual rights to receive pricing information other than on an aggregated basis or obtain gas sales agreements that Walloons enters with East Coast gas market customers.
- 2.8 **Confidential to MidOcean Energy: MidOcean has a right to receive information about aggregate net proceeds from domestic gas sales and LNG sales.**
- 2.9 **Confidential to MidOcean Energy: The parties have verification procedures in place for pricing calculations, and MidOcean will not receive the underlying information (even where the verification procedure is followed).**
- 2.10 MidOcean acknowledges that it may not have perfect visibility of what information Tokyo Gas is currently provided with and that it is theoretically possible that such information extends beyond its contractual rights. If QGC (or Walloons) is in practice providing more information to the Tokyo Gas participant than it is entitled to then, of course, QGC (or Walloons) can cease providing such information to the extent it has any concerns. Furthermore, to the extent QGC (or Walloons) considers it has an obligation to provide MidOcean individual customer or pricing information in relation to supply of gas in the East Coast gas market (other than on an aggregated basis), MidOcean confirms it would be prepared to waive any rights it has in relation to such information for as long as MidOcean has an interest in both the QCLNG and APLNG projects.

C No control over volume decisions

- 2.11 MidOcean acknowledges that post-acquisition it will have visibility of QCLNG gas production volumes (as would be anticipated for a participant in each of the underlying upstream coal seam gas joint ventures).
- 2.12 However, MidOcean confirms that as a 1.25% participant in the QCLNG project, if decisions come before the Operating Committee under any of the upstream coal seam gas joint operating agreements or the Coordination Committee for the QCLNG project more broadly, MidOcean will have no ability to control such production, expansion or curtailment/cessation decisions
- 2.13 MidOcean also notes that the requirements under the Gas Code of Conduct (made under the *Competition and Consumer (Gas Market Code) Regulations 2023* (Cth)) to publish information on uncontracted gas availability and intended expressions of interest for a rolling 24 month period (see particularly section 34) will also mean that the extent of gas QCLNG has available for the East Coast gas market will not be confidential and commercially sensitive.
- 2.14 Given that this volume information will not be confidential and MidOcean will not be responsible for APLNG's natural gas marketing to the East Coast gas marketing, MidOcean considers that access to QCLNG gas production volumes will not impact on competition for gas sales in the East Coast gas market.