

**Allens**

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia

T +61 2 9230 4000  
F +61 2 9230 5333  
www.allens.com.au

GPO Box 50  
Sydney NSW 2001 Australia

ABN 47 702 595 758



28 July 2023

Mr Daniel McCracken-Hewson  
General Manager | Merger Investigations Branch  
Australian Competition and Consumer Commission  
Level 17, 2 Lonsdale Street  
Melbourne VIC 3000

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 – interested parties' submissions**

We refer to the non-confidential interested parties' submissions published on the ACCC's register in respect of the above application as at 27 July 2023.

The Applicants' response to the submissions is provided in **Annexure A** to this letter.

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

A public version of Annexure A is also enclosed for the purposes of publication on the ACCC's register.

Yours sincerely



**Fiona Crosbie**  
Chair  
Allens

T

**Our Ref** FVCS:121124281  
ADOS 806086090v1 121124281 28.7.2023

## Annexure A

### Brookfield LP and MidOcean Energy acquisition of Origin Energy Limited

#### Response by the Applicants to interested parties' submissions (28 July 2023)

##### 1 Introduction

- 1.1 On 5 June 2023, Brookfield LP and MidOcean BidCo applied for merger authorisation in connection with their proposed acquisition of Origin Energy Limited (the **Application**).
- 1.2 The ACCC conducted a public consultation process in relation to the Application, including seeking submissions from interested parties by 23 June 2023. As at 27 July 2023, the ACCC has published non-confidential versions of nine submissions received from interested parties (together, the **Submissions**).
- 1.3 Of the nine submissions received:
- (a) two support the Proposed Acquisition (ANZ and CBA);
  - (b) one supports the Proposed Acquisition, subject to ensuring the 'green build-out' public benefits are realised (Ampol);
  - (c) two raise issues but do not object to the Proposed Acquisition, including on the basis that appropriate ring-fencing measures will be put in place (Alinta and Grattan Institute);
  - (d) three are opposed to the Proposed Acquisition (Syncline Energy, Mr Fyfe and anonymous); and
  - (e) one is limited to providing information to the ACCC (AGL).
- 1.4 The Applicants' responses to the Submissions are set out below in the above order. Unless otherwise stated, capitalised terms used in this response have the same meaning as in the Application. By way of summary:
- (a) **new generation connection to transmission:** the Applicants acknowledge that the connection process currently can be time consuming, principally because of the need for AEMO to conduct detailed modelling in an environment where the energy system is in transition, and that there is the potential for commercial disputes to arise. The connection process will, however, be unaffected by the Proposed Acquisition. Specifically, there is no potential for AusNet to discriminate against non-Origin generators. This is a result of AEMO's central role in the connection process in Victoria, extensive obligations on AusNet in relation to connection imposed in particular by the NER, and the availability of binding dispute resolution under the NER.
  - (b) **batteries and system strength services:** at least one submission expressed concerns in relation to batteries, system strength services, firming services and network augmentation. There is, in fact, vigorous competition from numerous actual and potential providers of these services, meaning no horizontal competition issues should arise. The regulatory regime and role of AEMO in Victoria also mean no vertical competition issues should arise in relation to these services;
  - (c) **combination of AusNet and Origin:** at least one submission appeared to assume that the Proposed Acquisition would result in a 're-bundling' of regulated transmission functions with competitive retail and generation functions. That is not correct. AusNet and Origin will remain separate companies with separate management teams and separate

## Public Version

owners (ie, separate Brookfield-managed funds and separate parties investing alongside the Brookfield funds). Although we do not consider it necessary, Brookfield has proposed a ring-fencing undertaking to reinforce this separation, Brookfield would be happy to discuss the content of the proposed undertaking with the ACCC further;

- (d) **public benefits:** several submissions suggest that Brookfield LP is not a unique provider of equity to the energy transition and the Proposed Acquisition would not generate public benefits by contributing to the energy transition. The public benefits of the Proposed Acquisition arise from a **combination** of Brookfield's capital and expertise, and Origin's structurally short electricity position. 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. The transformation of Origin will significantly advance Australia's effort to decarbonise its energy system. The challenges for Australia in meeting its 2030 targets are becoming increasingly clear, making it all the more important that Brookfield's proposed transformation of Origin can occur.

- 1.5 To the extent the Applicants have not responded to all matters raised in the Submissions, this should not be taken as acceptance of the positions asserted. If further submissions are published by the ACCC after 27 July 2023, then a further response may be provided by the Applicants.

## 2 ANZ Submission dated 23 June 2023

- 2.1 The ANZ Submission concludes:

*we support the Proposed Acquisition, as it will bring considerable ambition, expertise and capital which will assist in driving the ongoing transformation of the NEM at a critical juncture. We see the public benefit of ongoing competition in the NEM and in that regard also recognise the scale of the transition, which will require substantial investment by existing and new market participants. Finally, we see that financially strong retailers can [appropriately] manage their supply risk through owned and/or contracted generation capacity is also important to reduce price risk to their customers.*

- 2.2 The Applicants agree with this Submission.

## 3 Commonwealth Bank Submission dated 27 June 2023

- 3.1 The Commonwealth Bank Submission concludes:

*While we appreciate the proposed investment in renewables is only one aspect of a complex proposal, we regard that aspect as an important step in Australia's transition to a net zero economy by 2050. The proposed transaction creates an incentive for an investor of the size, capability, experience and credibility of Brookfield to opt to invest in renewables in Australia in a meaningful manner, notwithstanding opportunities to invest elsewhere in the world. The scale of commitment to decarbonise a company in a carbon-intensive industry sets a high bar and potentially forges a path for others.*

- 3.2 The Applicants agree with this Submission.

## 4 Ampol Submission dated 22 June 2023

- 4.1 Ampol states that its main concern in relation to the Proposed Acquisition is to ensure that the 'green build-out' public benefits submitted by the parties in support of the Proposed Acquisition are realised.

- 4.2 There can be a very high degree of confidence that BGTF will proceed with the green build-out of Origin for several reasons, including because it is in its financial and reputational interests to do so:

## Public Version

- (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.
- 4.3 Given these incentives, no undertaking is necessary in order for there to be a high degree of confidence that the green build-out will proceed: see paragraphs 859 – 873 of the Application.

## 5 Alinta Energy record of oral submission dated 30 June 2023

### A Overview

- 5.1 The record states Alinta has concerns '*regarding the combination of transmission and distribution assets with generation assets in the NEM*'. However, '*Alinta does not object to the Proposed Acquisition on the basis that appropriate ring fencing measures are used between the transmission/distribution and generation businesses owned by Brookfield and is of the view this can be achieved effectively through existing measures available to the ACCC*'.
- 5.2 Although we do not consider it necessary, 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). The Applicants' responses to the specific comments made by Alinta are set out below.

### B Impact of vertical integration on competing generators

#### Connections

- 5.3 Alinta states that it has concerns about the ability and incentive for TNSP/DNSP assets to discriminate against Origin's competitors when negotiating connections to the NEM.
- 5.4 The Applicants acknowledge that the connection process can be time consuming, principally because of the need for AEMO to conduct detailed modelling in an environment where the energy system is in transition, and that there is the potential for commercial disputes to arise. The connection process will, however, be unaffected by the Proposed Acquisition. In particular, there is no potential for AusNet to discriminate against non-Origin generators in relation to connections, for a number of reasons.
- 5.5 **First**, AEMO is the principal TNSP involved in the connections process in Victoria. A party seeking connection, such as a new generator, initiates the process by making an enquiry to AEMO and AEMO responds to such enquiries. An application for connection to the transmission network is also made to AEMO, who assesses the application. It is AEMO that is responsible for the modelling of interactions with the network, with AusNet providing support only. AEMO determines whether an augmentation is required and, if so, whether the augmentation will be

## Public Version

contestable. For contestable parts of any augmentation, AEMO conducts a competitive tender for the augmentation work (unless the generator wishes to assume responsibility and appoint a party to construct contestable works). It is also AEMO that makes an offer to connect the applicant to the transmission network and enters into a 'use of system' agreement. The fact that it is AEMO not AusNet taking each of these key steps substantially removes any ability for AusNet to discriminate.

5.6 **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. These obligations require AusNet:

- (a) to provide technical information necessary to facilitate the applicant's processing of a connection enquiry, to the extent that it holds such information: clause 5.3.2(f), NER. This obligation is a tier 3 civil penalty provision;
- (b) to make an offer to connect that is fair and reasonable and consistent with the safe and reliable operation of the power system: clause 5.3.6(c), NER. This obligation is a tier 3 civil penalty provision.
- (c) to 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), NER;
- (d) not to discriminate between a related electricity service provider (eg Origin) and a competitor (or potential competitor) of a related electricity service provider in connection with the provision of prescribed transmission services. Although prescribed transmission services do not include negotiated transmission services, including connection services that are provided to serve a generator, they do include connection services that are provided by a TNSP to another network service provider and so would include a service provided by AusNet to another TNSP providing contestable connection services: Electricity Transmission Ring-fencing Guidelines; and
- (e) to make an offer to connect that is fair and reasonable under AusNet's Transmission Licence: clause 5.5, NER.

5.7 **Third**, negotiations in relation to negotiated transmission services are subject to a dispute resolution process under the procedures in Version 109 of the NER. In particular, the AER can appoint a commercial arbitrator who can resolve the dispute: NER (Version 109) clause 6A.30.<sup>1</sup>

5.8 **Fourth**, the close involvement of AEMO, the connecting generator and, potentially, another transmission network service provider providing contestable connections means there is a high degree of visibility over the process. Any attempt by AusNet to deliberately delay a connection, for example, is likely to be apparent relatively quickly and be acted on, particularly by the relevant affected connecting generator.

5.9 **Fifth**, AusNet and Origin will remain separate companies, with separate management teams and separate owners (ie, separate Brookfield-managed funds and separate parties investing alongside the Brookfield funds). Brookfield generally does not receive detailed information about day-to-day operations of AusNet and is not involved in business-as-usual decision making. Brookfield has proposed a ring-fencing undertaking to reinforce this separation and to specifically ensure that:

- (a) there are separate boards of AusNet and Origin Energy Markets with no overlapping directors;

---

<sup>1</sup> Technically the dispute resolution procedures in Chapter 8 of the NER may also apply.

## Public Version

- (b) there are no overlapping employees;
  - (c) AusNet will have separate information technology systems from Origin Energy Markets;
  - (d) an employee of Origin Energy Markets will not be able to access the information technology system of AusNet or information stored on that system, and vice versa; and
  - (e) individuals within Brookfield who are responsible for managing Brookfield's interest in AusNet on a day to day basis, are not involved in the management of Brookfield's interest in Origin Energy Markets and vice versa. Brookfield will ensure that those individuals do not have access to the competitively sensitive information of the other company.
- 5.10 These arrangements would ensure that Origin Energy Markets is not able to access competitively sensitive connections information of AusNet either directly or via Brookfield.
- 5.11 A combination of the above factors means that it would not be possible for AusNet to discriminate against Origin's competitors when negotiating connections. This is discussed further in paragraphs 1013 to 1024 of the Application and paragraphs 139 to 144 of Annexure A to the Application.

### ***Maintenance and load shedding***

- 5.12 The record goes on to say that '*Alinta is also concerned about discrimination by the TNSP/DNSP assets in network operation decisions such as maintenance and load-shedding.*' This concern is not articulated further but the Applicants assume that these concerns relate to discrimination against non-Origin retailers.
- 5.13 AusNet has no ability to discriminate in relation to transmission maintenance and renewal, for the reasons discussed at paragraphs 1041 to 1073 of the Application, including because of obligations imposed on AusNet under electricity safety laws and its licence, the NER and contracts with generators, and the high degree of transparency and regulatory oversight of renewal and maintenance activities. AusNet similarly has no ability to discriminate in relation to maintenance and renewal of its Victorian distribution network. This is discussed at paragraphs 1214 to 1237 of the Application, in particular due to the dispersal of Origin and other retailer's customers geographically, the regulatory obligations imposed on AusNet and the high degree of transparency and regulatory oversight.
- 5.14 AusNet also has no ability to discriminate in relation to load shedding. Load shedding either occurs automatically or is directed by AEMO.

### ***Gas and smart metering***

- 5.15 The record notes that '*Alinta is comfortable with the gas aspects of the transaction. This includes the split of Origin's gas trading assets from APLNG and the addition of Jemena. There are not the same vertical integration concerns as there are for electricity as the connections process in gas is not as problematic.*'
- 5.16 The record notes that '*Alinta also does not have concerns regarding the link with Intellihub. Plenty of companies have generation and provide behind meter services, and plenty of companies are doing smart meters. The competition means that there are less concerns there.*'

## **B Potential for public benefits**

- 5.17 The record notes at paragraph 14 that '*[i]t is not necessary to have a retail base to develop renewables projects nor does it provide a massive financial advantage, it's just another strategy option.*' In the Applicant's view, having a significant retail base facilitates greater renewables development relative to other strategy options. This is principally because having a retail base provides a developer with a committed third party offtaker, significantly simplifying the commercial requirements for each project and accelerating the timeline to reach financial close. This also

## Public Version

allows the developer to avoid the costs of negotiating an offtake with a third party, which can be complex, costly and time consuming: see section 6.10(b) (in particular paragraphs 831 – 833) of the Application.

- 5.18 Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin further notes (see paragraph 40(b) of Anthony Lucas' statement dated 2 June 2023):

*From a corporate perspective, there is a limit to how many PPAs Origin can enter (a so-called 'capital-light' approach), because as more PPAs are used, the ongoing operating cash costs to the business increase (compared to what would be the case for owned renewable projects), leading to increased operating leverage, and at some point this would affect the balance sheet structure and credit rating of the business*

- 5.19 The record also states at paragraph 16 that '14 GW is significant, but the market is already competitive, so if Brookfield doesn't build it, someone else will'. This assumption is misplaced. It is increasingly clear that Australia will not achieve its renewables targets for 2030 or 2050 unless something changes. Even since the Application was lodged on 5 June 2023, a number of important statements have been made highlighting the challenges for Australia in meeting its 2030 goals and the need for significant new investment, as summarised below.

- (a) In a speech delivered in June 2023, the CEO of AEMO, Daniel Westerman, warned that investments in renewable energy are 'not happening fast enough' despite there being a 'strong pipeline of potential future generation projects proposed for the National Electricity Market'.<sup>2</sup> He added that 'recent data from the Clean Energy Council is concerning. It shows there have been no new financial commitments on large-scale renewable generation projects in Q1 this year.' While '[o]ne quarter doesn't make a trend ... investment decisions are an important leading indicator for our energy transition.'
- (b) This assessment of the energy transition happening too slowly is reiterated by research performed by Dr Dylan McConnell, a senior research associate at the University of New South Wales. While 8.5 TWh of new renewable energy from solar and wind was added to the NEM between June 2022 and June 2023, Dr McConnell assessed this to be only about half the annual rate required in order to reach the 82% renewable energy by 2030 target (16 TWh). Dr McConnell considers that '[e]very year we are not hitting those targets it makes the next year harder', and that '[t]here needs to be some kind of policy action or response to make sure that we do hit them because the way we are going we are not going to'.<sup>3</sup>
- (c) Prominent energy industry leaders share this view, including the former CEO of Snowy Hydro, Paul Broad, and the former chairwoman of the Energy Security Board and current director of AGL Energy, Dr Kerry Schott.<sup>4</sup>

- 5.20 The Proposed Acquisition will of course not remove all impediments to the transition or achieving Australia's 2030 climate goals. The Proposed Acquisition will, however, unlock the transformation of one of Australia's big three electricity retailers and thereby make a material contribution to Australia's transition efforts.

---

<sup>2</sup> Daniel Westerman, 'AEMO CEO Speech at Australian Energy Week', *Australian Energy Market Operator* (20 June 2023) <<https://aemo.com.au/newsroom/news-updates/aemo-ceo-speech-at-australian-energy-week>>.

<sup>3</sup> Ben Potter, 'The Renewables Boom Is Happening at Only Half the Pace Needed', *Australian Financial Review* (4 July 2023) <<https://www.afr.com/policy/energy-and-climate/nem-s-solar-wind-surge-still-only-half-rate-needed-20230703-p5dld9>>.

<sup>4</sup> Angela Macdonald-Smith and Mark Ludlow, 'Meeting 2030 Energy Targets Close to "Impossible"', *Australian Financial Review* (10 July 2023) <<https://www.afr.com/companies/energy/meeting-2030-energy-targets-close-to-imposs-ble-20230704-p5dlmm>>.

## 6 Grattan Institute record of oral submission dated 3 July 2023

### A Overview

- 6.1 The Grattan Institute's oral submission raises some concerns, but ultimately the '*Grattan Institute submits that on balance, it has concerns but not enough to stop the Proposed Acquisition proceeding*'. It also states that '*the risk that the draft undertaking is not sufficient is small*'.
- 6.2 The Applicants' responses to the specific concerns raised by the Grattan Institute are set out below and notes that as a general comment the Grattan institute makes several assertions but provides no evidence to support any of them.

### B Risk of Information sharing between AusNet and Brookfield related entities

- 6.3 The record states:

*Grattan Institute considers the main concern is the link between the existing AusNet business and Origin's retail business. The boundaries between regulated and unregulated businesses are becoming less clear. One example is battery storage which can be used by both a distribution network and as a generation asset. It would be possible for a business that owns a distribution network, generation and retail businesses to use this knowledge against one of their competitors, for example because network owners best understand where to place batteries.*

- 6.4 The Applicants assume that the concern raised by the Grattan Institute is in relation to the use of batteries performing a generation function and the theory that AusNet could discriminate against Origin's generation competitors. This is not possible because:
- (a) new BESS in Victoria would need to connect to the existing AusNet transmission system. As explained above, AusNet has no ability to discriminate against non-AusNet or Origin BESS generators in relation to connections to the AusNet transmission system, in particular because of the role of AEMO in relation to connections and the governing regulatory regime; and
  - (b) as to information about the best areas to place batteries, AEMO publishes extensive information about Victorian transmission networks, including planning and long time performance. Furthermore, any connection, enquiry or application is made to AEMO not AusNet and it is AEMO that conducts relevant system impact modelling.

- 6.5 As discussed above, AusNet and Origin will remain separate companies with separate management teams and separate owners. The ring-fencing undertaking proposed by the Applicants will ensure that competitively sensitive information that might be held by AusNet in relation to the best areas to place batteries is not passed to Origin through Brookfield.

- 6.6 The record goes on to acknowledge that '*some issues raised by the Proposed Acquisition could be addressed through the draft undertaking and/or employment arrangements*.' The record also states that '*the risk that the draft undertaking is not sufficient is small*'. The Applicants agree.

### C Ability for Brookfield to favour its related entities

- 6.7 The Grattan Institute '*submits it is less likely Brookfield would be able to favour related entities in the electricity market compared to gas markets, because the electricity market is a reasonably transparent gross pool market*'. The record goes on to say that '*gas pipelines are substantially contracted to shippers for annual and daily quantities, but sometimes spare capacity that is contracted is not consumed. This is a possible expensive way to keep competitors off the pipeline by limiting capacity in the market. It is complex but can create circumstances whereby customers feel like they cannot access capacity*'.
- 6.8 AusNet does not own any gas transmission pipelines. The Applicants therefore assume that this comment relates to Brookfield's co-underwriter, Temasek, and its indirect 40% interest in Jemena. Temasek's proposed 9.9% interest in Brookfield LP and its 40%, indirect, interest in



## Public Version

Jemena will not give rise to any vertical competition concerns. The Application provides further detail at Chapter 12 however, to summarise in relation to transmission pipelines:

- (a) Temasek will have only a 9.9% indirect interest in Origin Energy Markets, meaning it has limited incentive to engage in vertical foreclosure;
- (b) Temasek's interest in Jemena is only 40%, and indirect through SP Group, which operates independently from Temasek, meaning it has limited ability to engage in vertical foreclosure. As a matter of long-standing governance policy, Temasek does not direct the business decisions or operations of its portfolio companies and therefore its portfolio companies operate independently of Temasek on day-to-day basis, including SP Group; and
- (c) Jemena's assets are, in any event, regulated, removing any ability to engage in vertical foreclosure.

6.9 As to Grattan Institute's comments on capacity, as explained in Chapter 12 of the Application, there is uncontracted spare capacity on each of Jemena's pipelines that transport gas for use in retail markets (being the Eastern Gas Pipeline and Northern Gas Pipeline).

### **D Ability and incentive for a TNSP to discriminate against a generator**

6.10 The record states that the Grattan Institute noted *'it is unclear whether a market structure could emerge in Victoria whereby AusNet could discriminate against non-Origin generators. It is unlikely that AusNet would be able to discriminate because the government is going down the path in which TNSPs would not have more power. However, Grattan Institute also submits that it does not know how the market structure would look in the future and the structure by which decisions would be made is uncertain, so it cannot definitely say discrimination would not occur.'*

6.11 The Applicants agree that it is unlikely that AusNet will be able to discriminate against non-Origin generators and agree that any regulatory reform will not give TNSP's more power. As the Applicants noted in response to the ACCC's section 90(6)(b) request of 11 July 2023, the Victorian government published its Final Design Paper for the proposed Victorian Transmission Investment Framework (*VTIF*) in June. The VTIF sets out 'a new approach to developing major electricity transmission infrastructure and Renewable Energy Zones' and outlines the Victorian government's proposals for an integrated approach for planning and delivering electricity transmission infrastructure.

6.12 The VTIF is still under development and key policy decisions are expected over the next 18 months. While the details are yet to be confirmed, the policy direction seems reasonably clear and is likely to involve the following:

- (a) the transfer of Victorian transmission planning functions from AEMO to VicGrid;
- (b) for procurement functions to either remain with AEMO or (more likely) for VicGrid to assume all these functions; and
- (c) no change in the contestability threshold (\$10 million) for augmentations.

6.13 The VTIF reforms are likely to have a neutral to positive impact on the competitive outcomes for electricity transmission in the context of the Proposed Acquisition. In particular, it is likely that:

- (a) transmission planning and procurement will continue to be performed by an independent body, either AEMO or, most likely, VicGrid. There is no suggestion these functions would revert to AusNet; and
- (b) VicGrid will be supported by additional legislative functions which are designed to confirm its independence and operations.

**E Overview of Applicants' claimed public benefits and the counterfactual**

6.14 The record states:

*Grattan Institute submits the Applicants' public benefits argument is not particularly compelling. There is no reason why Origin could not pursue a similar strategy without Brookfield acquiring it.*

6.15 The Applicants do not agree that Origin could pursue a similar strategy to achieve the green build-out plan for its transition if the Proposed Acquisition does not proceed. The Grattan Institute provides no evidence or additional information to support its assertion.

6.16 The BGTF Consortium's green build-out plan involves the development of 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.

6.17 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 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. As a publicly listed company, it would not be realistic for Origin to pursue a similar strategy for its transition.

6.18 The crucial point is that absent the Proposed Acquisition, Origin would continue to operate its business in accordance with its existing strategy and business plan, as outlined in its Climate Transition Action Plan dated 26 August 2022 (**CTAP**). The CTAP reflects the minimum level of commitments that Origin will achieve in its energy transition to renewables. In relation to new renewables development, based on recent practice, Brookfield estimates that Origin would develop 4 GW of new renewable capacity by 2033, being 10 GW less than what is proposed under the BGTF Consortium's green build-out plan: see section 3.2.2 (paragraphs 357 and 362-365) of the Application.

6.19 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... 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.*

**F Benefits of vertical integration between generation and retail**

6.20 The record states:

*Grattan Institute submits that vertical integration is sometimes a benefit and sometimes it is not, depending on market circumstances. On the surface, the advantage is that it allows a company to better manage risk when it participates in both ends of the market. However, in the energy market last year, some participants that were not vertically integrated did okay because they had long-term contracts for wholesale electricity. The way that companies provide hedge contracts around the market can become more of an issue than whether they are vertically integrated.*

6.21 The Applicants agree with the stated advantage of vertical integration between generation and retail, and further submit that this structure also facilitates greater renewables development relative to one that is not vertically integrated in this way, as discussed above in paragraph 5.17.

**G Whether Brookfield is better placed than other investors to develop renewable generation and storage assets**

6.22 The record of the meeting states (own emphasis added):

*Grattan Institute submits Brookfield is well-placed to develop renewable generation because of its exposure to the sector overseas and the ability to secure supply of components. However, Australia could find itself in a supply chain that is constrained. **While Brookfield is well-placed to participate in a global supply chain, there are other businesses that are well-placed as well.***

...

*In relation to Brookfield's access to capital, **providing a company (like Origin) with a greater capacity to spend will not help the transition because the problem is not money.** There is enough capacity to build the renewable generation required between Origin, Alinta, Snowy Hydro and Energy Australia.*

6.23 The Applicants agree that 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 particularly in relation to battery storage projects (see paragraph 80 of Anthony Lucas' statement dated 2 June 2023), but also more generally, 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. While other businesses may also be well-placed to *'participate in a global supply chain'*, no such businesses have publicly announced an intention to develop 14 GW of renewable generation and storage capacity in Australia by 2033.

6.24 The Applicants do not agree that *'providing Origin with a greater capacity to spend will not help the transition because the problem is not money'*. Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin acknowledges that a challenge Origin faces in delivery its transition plan is the need for capital investment. Mr Lucas states (see paragraph 47 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 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.*

6.25 In any event, the BGTF Consortium is not merely providing access to capital, but also access to Brookfield's renewables expertise, global procurement and construction capabilities and a commitment to the transition over a long-term investment horizon (ie 10 years). The Applicants submit that this combination will help Origin transition (noting the constraints it faces as a publicly listed company, as described in section E above) and make a significant contribution to Australia's transition.

**H Whether Brookfield's proposed development would impact the development of renewable energy projects by other parties**

6.26 Paragraph 14 of the record suggests that the Proposed Acquisition would not result in crowding out of renewable energy projects by other parties. The Applicants agree with this, including

## Public Version

because the Proposed Acquisition should not have an adverse impact on other renewables developers, including those seeking to enter into PPAs. In particular:

- (a) overall demand for new renewable generation is very high. Origin Energy Markets represents only approximately 18.77% of electricity demand in the NEM. A range of other retailers, including AGL and EnergyAustralia, and industrial and commercial customers, are all seeking to build or enter into PPAs to support the building of renewables. There are a large number of companies developing renewable generation and storage in Australia; and
- (b) although Brookfield's base case is that it would build the 14 GW itself within Origin Energy Markets, it 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.

### I Challenges transitioning the NEM to renewable energy sources

- 6.27 The Applicants agree that the challenges described in paragraphs 15, 17 and 18 of the record are, or will be, challenges for the transition. 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. Under BGTF Consortium ownership, Origin will be transformed in ten years to a position where **Confidential to Brookfield: a significant majority** of its aggregate customer load requirements are met by renewables constructed through the green build-out by 2033. As explained in the Application, the BGTF Consortium aims to have Origin build in the order of an additional 10 GW of renewable capacity by 2033 compared to Origin's current plans.
- 6.28 In addition, paragraph 16 downplays the important role of further capital (including private capital) to achieve Australia's climate goals. Several important statements have been made about the unprecedented levels of capital investment that will be required to achieve Australia's energy transition. For example:
- (a) at the Sharm el-Sheikh Climate Change Conference in November 2022, the United Nations Framework Convention on Climate Change (**UNFCCC**) parties issued an Implementation Plan, which highlighted that about US\$ 4 trillion per year needs to be invested in renewable energy globally up until 2030 to be able to reach net zero emissions by 2050;<sup>5</sup>
  - (b) AEMO notes that the 2022 Integrated System Plan *'is for a true transformation of the NEM, from fossil fuels to firmed renewables. It calls for levels of investment in generation, storage, transmission and system services that exceed all previous efforts combined'*;<sup>6</sup>
  - (c) AEMO suggests the total spend needed to develop, operate and maintain the generation, storage and transmission investments in the NEM to 2050 is around \$320 billion;<sup>7</sup>
  - (d) in a statement by Clean Energy Finance Corporation (**CEFC**) CEO Ian Learmonth in May 2023, the CEFC estimates that \$120 billion of capital expenditure is needed to finance new solar, wind, transmission, storage and ancillary services to 2030 in order to meet renewable and emissions targets;<sup>8</sup> and

<sup>5</sup> UNFCCC, Sharm el-Sheikh Implementation Plan (November 2022), para 30

[https://unfccc.int/sites/default/files/resource/cop27\\_auv\\_2\\_cover%20decision.pdf](https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf)

<sup>6</sup> AEMO Integrated System Plan (2022), page 3 <https://aemo.com.au/-/media/files/major-publications/isp/2022/2022-documents/2022-integrated-system-plan-isp.pdf>

<sup>7</sup> AEMO 2022 ISP, footnote 4 (**Annexure 8**).

<sup>8</sup> The Australian Business Review, *Australia 'behind the pace' on 2030 renewables targets: CEFC*, 15 May 2023.

## Public Version

- (e) at an address to the Sydney Energy Forum, the Prime Minister noted that *'It is essential that the unprecedented levels of investment in clean energy technologies required over the coming decades unlocks more diverse and secure supply chains than we have today'*.<sup>9</sup>

### **J Impact of the Proposed Acquisition**

- 6.29 Paragraph 20 of the record notes that the Grattan Institute *'has concerns but not enough to stop the Proposed Acquisition proceeding'*. The record notes particular concerns about commitments regarding the proposed investment.
- 6.30 As noted at paragraph 4.2, there can be a high degree of confidence that BGTF will execute the green build-out plan for Origin Energy Markets for a number of reasons, including because it is in its strong financial and reputational interest to do so.

## **7 Syncline Energy Submission dated 25 June 2023**

### **A Market definition**

- 7.1 The Syncline Energy Submission suggests that Brookfield's market definition for the electricity sector is missing three critical emerging services:
- provision of firming services to independent renewable generators and retailers;
  - system strength services; and
  - network augmentation.
- 7.2 The Submission goes on to observe that each of Origin and AusNet has a very large battery energy storage system (**BESS**) project in Victoria – a planned 300 MW AusNet BESS at Thomastown and a 300 MW Origin BESS at Mortlake.<sup>10</sup>
- 7.3 The Submission also states that the *'vertical integration of Origin and AusNet would deliver a unique monopoly supplier of these system strength, firming and grid augmentation services'*.
- 7.4 In the Applicants' view, each of these three services comprise a part of the market for wholesale generation and supply of electricity and/or the market for transmission services. A BESS might, for example, earn a return through arbitrage in the wholesale electricity market, charging when prices are low and discharging when prices are high. Alternatively, it may provide network support services for a transmission line, charging when a line would otherwise be constrained and discharging when the line is not constrained. In performing the first function, a BESS is properly seen as part of the generation market and in performing the second function as part of the contestable transmission services market. Treating BESS, for example, as a separate market may both overstate the degree of competition between BESS (a BESS providing generation services in one location is not competing with a BESS providing network support services in a different location) and ignore the real competitive constraints on a BESS (a BESS earning generation arbitrage is competing with other generators). Irrespective, however, of whether these 'emerging services' are treated as part of broader markets or as separate markets of their own, the Proposed Acquisition will not raise horizontal or vertical competition concerns. We discuss each of the three services identified in turn below.

#### **Firming services**

- 7.5 'Firming services' generally refers to the ability of dispatchable energy sources (such as a battery, hydro generation or gas fired generation) to be used to provide energy at times when variable

---

<sup>9</sup> Prime Minister of Australia, *Address to the Sydney Energy Forum* (12 July 2022) <https://www.pm.gov.au/media/address-sydney-energy-forum>

<sup>10</sup> Note that the Thomastown BESS referred to in the Syncline Energy Submission is the 320 MW Thomastown project developed by Mondo, rather than AusNet.

## Public Version

energy resources (such as solar and wind) are unavailable because the relevant solar or wind resource is reduced (for example, because of heavy cloud or low wind).

- 7.6 The Syncline Energy Submission seems to raise a concern about the fact that both Origin and AusNet have a BESS project under consideration in Victoria. It should be noted that the 'AusNet' Thomastown BESS project is in fact being developed by Mondo. As required by the Transmission Ring-Fencing Guidelines, Mondo is a separate legal entity that provides contestable services and is ring-fenced from the AusNet legal entity that owns and operates the principal Victorian transmission network.
- 7.7 There are numerous BESS projects proposed in Victoria in addition to the Mondo and Origin projects. AEMO generation information identifies the following currently operating batteries and proposed battery projects in Victoria:<sup>11</sup>

Status	Number of plants / projects	Nameplate Capacity (MW)	% of Total Nameplate Capacity	Storage Capacity (MWh)
Existing	4 existing plants	375.33	2.91%	564
In Commissioning	1 project	5	0.04%	10
Committed	2 projects	400.07	3.10%	550
Anticipated	3 projects	820	6.35%	2,310
Proposed	44 projects	11,310.31	87.60%	13,465
<b>Total</b>	<b>54</b>	<b>12,910.71</b>	<b>100.0%</b>	<b>16,899</b>

- 7.8 The four existing plants are:
- (a) Ballarat Energy Storage System (30 MW) – owned by AusNet but operated by EnergyAustralia;
  - (b) Bulgana Green Power Hub – owned by BESS Bulgana Wind Farm Pty Ltd;
  - (c) Gannawarra Energy Storage System – owned by GESS ProjectCo; and
  - (d) Victorian Big Battery – owned by Victorian Big Battery Pty Ltd;
- 7.9 The one project being commissioned is the Phillip Island BESS (5 MW), owned by Mondo.
- 7.10 The two committed projects are:
- (a) Hazelwood Battery Energy Storage System – owned by Hazelwood BESS Project Co Pty Ltd as trustee for the HBESS Asset Trust; and
  - (b) Rangebank Bess – owned by Shell New Energies Australia Pty Ltd.
- 7.11 The three anticipated projects are:<sup>12</sup>
- (a) Gnarwarre BESS Facility – owned by ACEnergy Pty Ltd;
  - (b) Koorangie Energy Storage System – owned by Edify Energy; and
  - (c) Wooreen Energy Storage System – owned by EnergyAustralia.
- 7.12 As noted above, the AusNet Ballarat battery is leased to EnergyAustralia, and EnergyAustralia uses the battery to store and discharge electricity. EnergyAustralia, not AusNet, sells and purchases electricity using the battery and takes wholesale electricity price risk. Mondo has

<sup>11</sup> Australian Energy Market Operator, 'Generation Information: NEM Generation Information' (13 July 2023) <<https://aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/nem-forecasting-and-planning/forecasting-and-planning-data/generation-information>>.

<sup>12</sup> In respect of these projects, AusNet provides only connection services and otherwise has no other involvement.

## Public Version

proposals to develop two other BESS including, in addition to Thomastown, a 100 MW battery at Altona. The Thomastown and Altona BESS, if developed, would operate on a generally similar basis to Ballarat, ie they would be made available to one or more third parties, who would operate them and participate in the wholesale electricity market, as they determine. A special purpose vehicle would own and maintain the battery, primarily through arrangements with the OE/SM, with the possibility on one or more of the offtakers having an equity stake in the vehicle. The small Phillip Island battery (5 MW) when developed will operate on a different basis and provide system strength services. Mondo owns and operates that battery, and it will provide network support services under an awarded contract to the AusNet electricity distribution network in connection with Phillip Island, particularly in summer when an influx of visitors significantly increases demand. The battery may also participate in the wholesale electricity market, to the extent it is not required for contracted network support.

- 7.13 Importantly, the two AusNet-proposed BESS projects (Thomastown and Altona) and the one Origin-proposed BESS project (Mortlake) are only three of the 44 proposed BESS projects in Victoria identified by AEMO. These AusNet and Origin BESS projects together represent about 5.58% of the MW of proposed BESS projects identified by AEMO.
- 7.14 BESS are of course only one type of system capable of providing firming services. Additional competition is faced from gas fired generators and from hydro generation, including pumped hydro.
- 7.15 As a result of the above, no horizontal competition concerns could arise in relation to 'firming services', even if such services were considered to be a separate market. For the reasons discussed above, in the Applicants' view they should be seen as part of a broader generation market, in any event.
- 7.16 In addition, no vertical competition concerns are likely to arise:
- (a) new BESS, hydro generation and gas fired generation in Victoria would need to connect to the existing AusNet transmission system. However, AusNet has no ability to refuse or delay non AusNet or Origin BESS and firming generators from connecting to the AusNet transmission system, for the reasons discussed above; and
  - (b) the Transmission Ring-Fencing Guidelines now prevent TNSPs from leasing excess capacity from batteries, unless it is for the sole purpose of providing the TNSP with network support services, without a waiver from the AER. The AER notes that '*[t]his brings the transmission ring-fencing guideline into alignment with the distribution guideline. It also provides important protection for competition in the gridscale battery market, which is in an early stage of development*'. Without a waiver, a regulated business like AusNet cannot earn revenue from buying and selling electricity in the wholesale market.

### **System strength services**

- 7.17 System strength services are part of a wider suite of essential system services that help keep the parameters of the electricity system within acceptable limits so that it reliably and securely delivers electricity. For example, maintaining frequency and voltage around the levels required in order to maintain a secure and reliable power system.<sup>13</sup> Many of these services, notably 'system strength' and 'inertia', have previously been provided as a by-product of 'synchronous generators' such as coal fired, gas fired and hydro generators. Synchronous generators have large spinning turbines and rotors, whose rotation is synchronised to the frequency of the power system. These components are heavy, typically weighing tens or hundreds of tonnes, and provide high mechanical inertia. Wind and solar generators by contrast use inverters rather than large spinning

---

<sup>13</sup> 'Essential System Services and Inertia in the NEM', June 2022 AEMC and AEMO.

turbines and rotors and do not inherently provide system strength and inertia services. As the electricity system transitions away from coal and gas fired generation towards wind and solar generation, these system services will no longer be provided as a by-product of generation. In order to ensure ongoing system security, important market reforms are under way to identify, procure and fund these services as standalone supplies.

7.18 AEMO has published a useful infographic summarising recent reports it has prepared in relation to system strength, inertia and network support and control ancillary services (**NSCAS**), a part of which is extracted below.





## Public Version

- 7.19 In 2021 the AEMC introduced major reforms in this area, including a requirement for specified TNSPs to be responsible for determining and procuring system strength services in its area. Critically AEMO, as Victorian TNSP, is the system strength provider for Victoria, not AusNet.
- 7.20 As illustrated in the AEMO infographic, there are a mix of services and technology that can provide system strength, inertia and NSCAS. In particular:
- synchronous condensers fitted with flywheels – these would be procured by AEMO and connected to AusNet's transmission system. They do not have to be provided by AusNet. Other providers could include other TNSPs, generators and third party new entrants;
  - batteries and other equipment able to provide a fast frequency response – as discussed above, there are numerous BESS projects in Victoria that could provide this service;
  - battery, solar and wind farms connected to the system with advanced inverters – this is in part dependent on technological developments, but there are numerous battery, solar and wind projects being considered in Victoria;
  - services from existing synchronous generators – there are number of coal, gas and hydro synchronous generators operating in Victoria currently in addition to Origin's Mortlake gas fired generator, including:
    - **Coal:** Loy Yang A, Loy Yang B and Yallourn;
    - **Gas:** Bairnsdale, Jeeralang, Laverton North, Longford, Newport, Somerton and Valley Power;
    - **Hydro:** Bogong / Mackay, Dartmouth, Eildon, Hume Vic, Murray 1, Murray 2 and West Kiewa; and
  - retrofit of existing synchronous generators to operate as synchronous condensers – this could be provided by the relevant generators or third parties.
- 7.21 As noted above, AEMO is responsible for procuring system strength services as the system strength provider in Victoria, rather than AusNet. AusNet has no special or preferred status as a provider of system strength services. For example, as part of the Victorian Government's REZ Development Plan Stage 1, Transmission Operations (Australia) was awarded a System Support Agreement to provide up to 600 MW of services to strengthen the power system in western Victoria, including services from a synchronous condenser located at the Ararat Terminal Station.
- 7.22 The role of AEMO as procurer, and the range of alternative providers of these services, means that the Proposed Acquisition could not give rise to any horizontal competition issues even if the relevant market was limited to system strength and related services. The fact that these services 'sit between generation and transmission' is not a concern. In fact, this overlap significantly increases competition because the number of potential suppliers includes TNSPs, generators and other market participants.
- 7.23 No vertical competition law issues will arise because:
- (a) the 2021 NEM reforms nominate AEMO (as Victorian TNSP) as the entity responsible for procuring system strength in Victoria. As with the wider transmission access assessment, AEMO's unique role in Victoria provides significant additional oversight of system strength services in Victoria;
  - (b) the existing regulatory regime and the role of AEMO ensure that AusNet is not able leverage its position as owner and operator of the principal Victorian transmission network to advantage either itself or Origin in the market for these services. Many of these essential system services will require a connection with the AusNet transmission system (eg, a synchronous condenser, a battery with an advanced inverter, or new

## Public Version

synchronous generators such as pumped hydro). For the reasons discussed in the Application and above, there is no ability for AusNet to refuse or delay such connections; and

- (c) the market bodies are well across the need to establish appropriate mechanisms for system services to support the energy transition. Reforms are directly focused on these issues and are unrelated to the Proposed Acquisition.

### **Network augmentation**

- 7.24 The Syncline Energy Submission asserts that the Proposed Acquisition would result in Brookfield controlling a very material market share of 'new' grid augmentation services. In the Applicants' view, 'new' grid augmentation services should be seen as part of a national market for the supply of contestable transmission augmentation and connection services (see section 7.1 of the Application). Irrespective of market definition, however, no competition issues should arise in relation to network augmentation.
- 7.25 As outlined in the Application, from a vertical merger perspective, the Proposed Acquisition will not have an adverse impact on transmission connection and augmentation in Victoria, in particular because of the active oversight and procurement role played by AEMO (as Victorian TNSP) and the connection regulatory regime, as discussed above.
- 7.26 As discussed in the Application, network augmentations in Victoria are contestable where the capital cost is expected to exceed \$10 million and where the augmentation is separable from the rest of the AusNet network. AEMO determines whether an augmentation is contestable. This regime means that there is active competition in relation to contestable network augmentations connection works: see section 8.3(b) of the Application (in particular paragraph 1009, which lists recent tenders won by parties other than AusNet).
- 7.27 In Victoria, it is AEMO that plans network augmentations and conducts the RIT-T to determine how the network is best augmented. In appropriate cases this may include a consideration of whether a network is best augmented by developing a new battery that provides network support services at a key location or by upgrading the transmission network itself. Although in theory both Origin and AusNet might seek to provide the same or alternative solutions, so too could a range of other TNSPs, generators or new entrants. As noted above the fact that these services 'sit between generation and transmission' increases competition because the potential suppliers include TNSPs, generators and other market participants. As a result, no horizontal competition issues can arise in relation to network augmentations.

### **Description of assets**

- 7.28 For completeness, there are two corrections to Syncline Energy's description of Brookfield LP's assets as set out in paragraph 10 of the Submission.
- 7.29 **First**, Brookfield LP will not control Jemena (via a co-underwriter in Brookfield). Rather, Temasek has a 40% interest in Jemena and will have a 9.9% interest in Brookfield LP. Temasek will not control either Jemena or Brookfield LP. Brookfield LP has no interest in Jemena and will not control it.
- 7.30 **Second**, Octopus Energy does not have battery and energy development projects in Australia. As explained at paragraphs 623 and 624 of the Application, Origin owns 20% of Octopus Energy, a UK based energy retailer and technology company. Octopus Energy has no assets in Australia. A separate company, Octopus Investments, owns 40% of Octopus Energy. Octopus Investments also owns Octopus Australia, which is targeting investments in large scale wind, solar and storage assets in Australia. Origin has no interest in Octopus Australia or its generation assets and projects.

## Public Version

### **B Vertical relationship – electricity transmission and generation co-ownership**

7.31 This section of the Syncline Energy Submission has been redacted entirely. Accordingly, the Applicants cannot comment on it.

### **C Adequacy of existing regulatory measure and penalties**

7.32 This section of the Syncline Energy Submission has been redacted entirely. Accordingly, the Applicants cannot comment on it.

### **D Proposed undertaking**

7.33 Syncline Energy states that it does not believe that the proposed undertaking, or any undertakings, would be sufficient to avoid a substantial lessening of competition. Syncline Energy also states that the Proposed Acquisition will result in vertical integration of the sector in Victoria and a 're-bundling' of regulated transmission functions with currently competitive retail and generation functions. Syncline Energy also states that *'if the Proposed Acquisition is to proceed, then only separate ownership of the regulated assets would give sufficient confidence that there were no holes in the ring-fence'*.

7.34 It should be noted at the outset that the Proposed Acquisition will not result in a 're-bundling' of transmission with generation/retail. As discussed above, AusNet and Origin will remain separate companies, with separate management teams, and separate owners (ie, separate Brookfield LP funds and separate parties investing alongside the Brookfield funds). This is discussed in more detail at section 8.5 of the Application. Separate ownership of the regulated assets is what is proposed. The proposed ring-fencing undertaking offered reinforces this separation.

7.35 The Syncline Energy Submission states that it has direct experience in connecting storage and renewable energy projects to the grid via AusNet/Brookfield and has a detailed understanding of how anti-competitive conduct might be used to leverage excess returns for ring-fenced assets. The current challenges in relation to connection arise from a combination of congested transmission lines, multiple parties seeking connection at the same or different locations, often from renewable generators with implications for system strength, and the potential for a delay and a dispute to arise from these technical difficulties. This is unrelated to the Proposed Acquisition.

### **E Public benefits**

7.36 Syncline Energy suggests that Brookfield LP is not a unique provider of equity to the energy transition. Syncline Energy cites planning and environmental approvals, grid constraints and the absence of mechanisms to procure system strength and firming, as constraints on the energy transition. The Submission states that there is a risk that Brookfield LP would *'drip feed new projects to the market; rationally advancing only its best projects; and ensuring any new project did not cannibalise an existing Brookfield market. We prefer the existing structure where there is a diverse pool of investment seeking to participate in the energy transition'*.

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

7.38 **First**, the public benefits of the Proposed Acquisition arise from a **combination** of BGTF Consortium capital; Brookfield's renewables expertise, global procurement and construction capabilities and commitment to the transition; **and** Origin's structurally short electricity position. Under BGTF Consortium ownership, Origin will be transformed in ten years to a position where **Confidential to Brookfield: a significant majority** of its aggregate customer load requirements are met by renewables constructed through the green build-out by 2033. That will not occur under the current ownership structure where the realities of being a listed company mean Origin must have less ambitious transition goals. As explained in the Application, the BGTF Consortium aims to have Origin build in the order of an additional 10 GW of renewable capacity by 2033 compared

## Public Version

to Origin's current plans. The transition of Origin will significantly advance Australia's effort to decarbonise its energy system.

- 7.39 **Second**, although Syncline Energy may prefer the existing structure for its business model, that structure is not delivering the transition to net zero. As discussed above, it is increasingly clear that there are challenges for Australia in meeting its 2030 goals and a need for significant new investment. The Proposed Acquisition will unlock the transformation of one of Australia's big three retailers and thereby make a material contribution to Australia's transition efforts.
- 7.40 **Third**, the Proposed Acquisition will not materially impact demand for independent PPAs, as discussed at paragraph 6.26. The balance of the market will still be available for Syncline Energy and others to enter into PPAs with. But the delays and challenges of relying on PPAs and what that means for the transition should be acknowledged.
- 7.41 **Fourth**, there is no basis to suggest Brookfield will drip feed projects to the market. Its up to 14 GW ambition by 2033 will require financially viable projects to be identified and developed as rapidly as possible: see paragraph 4.2 above.
- 7.42 **Finally**, the Applicants do not agree with the characterisation in the Syncline Energy Submission of a trade-off between competition policy and energy transition. The regulatory regime, coupled with separate ownership and the proposed ring-fencing undertaking, will ensure any transmission market power cannot be leveraged in any way by AusNet to advantage Origin. The proposed green build-out of Origin reflects an efficient organisational structure driven by competitive forces that will assist in delivering the energy transition.

## 8 AGL Submission dated 23 June 2023

- 8.1 The AGL Submission provides information that it considers may assist the ACCC in a number of areas, each of which is discussed below.

### A Key role of electricity networks

- 8.2 AGL makes observations about the key role electricity networks play in the NEM.

*it is important that the interactions between competitive markets and network businesses (including transmission and distribution networks) are fair and transparent and facilitate effective competition between participants in contestable markets that rely on those networks.*

- 8.3 The submission goes on to describe the process for obtaining connection approval for new generation to transmission networks, emphasising its complexity including the requirement for '*highly detailed modelling of the interactions with the network, including dynamic behaviour relating to factors including system strength, powerflow and voltage impacts*'.
- 8.4 The Applicants acknowledge that the connection process does raise complex technical issues. In particular, the modelling of interactions with the network designed to ensure system strength and reliability is inevitably both necessary and complex. The modelling required and complexity of the connection process will, however, be unaffected by the Proposed Acquisition.
- 8.5 We note that the AGL Submission does not draw a distinction between the position in Victoria, where AEMO has a central role in relation to connections, and the position in other NEM States and Territories. In particular, in Victoria it continues to be AEMO that is responsible for the modelling of interactions with the network, with AusNet providing support only. It is possible that the Victorian transmission investment framework reforms will result in some of AEMO's functions being transferred to a Victorian government body, VicGrid. If that occurs, it may be VicGrid rather than AEMO that performs a central role in relation to connections in Victoria. But in either case, it will be a regulatory body independent of AusNet.
- 8.6 The key point to note, as described in the Application and discussed above, is that there is no ability for AusNet to discriminate against competing generators by refusing or delaying

## Public Version

connections given the central role of AEMO in Victoria and the regulatory regime applying to connections: see section 8.3(c) (paragraphs 1013 – 1024) of the Application.

### **B Existing regulatory regime**

- 8.7 The AGL submission notes that: *'It is important that the conditions for open, fair and transparent competition in contestable energy markets are maintained, that participants have confidence that this is the case and that regulatory bodies are in a position to effectively monitor and enforce compliance with all relevant laws and obligations. This includes in respect of the relationship between participants in contestable markets and electricity networks.'*
- 8.8 One example quoted is the current AER consultation in relation to potential ring-fencing rule changes, which are focussed on ring-fencing between contestable and non-contestable aspects of connections.
- 8.9 Another example quoted is that energy distributors and retailers have shared customers and are required to work together to ensure that relevant information is shared between them in a timely manner.
- 8.10 The Applicants agree that it is important that the conditions for open, fair and transparent competition in contestable energy markets are maintained. In the Applicants' view, those conditions exist today, and will continue to exist with the Proposed Acquisition. The Applicants also note the ability for relevant regulatory bodies to continue to refine the regulatory regime to ensure that this remains the case.
- 8.11 In the current AER consultation regarding potential ring-fencing rule changes, the specific issue being considered is the potential for TNSPs to leverage their position in non-contestable connection works to their advantage in relation to the provision of contestable connection works. This issue is unrelated to ring-fencing between transmission and generation and to the Proposed Acquisition. Furthermore, the change process being followed demonstrates that the ring-fencing rules can be amended to address emerging issues.
- 8.12 Further, there is no basis to think that AusNet as a distributor would not work as cooperatively with non-Origin retailers in the sharing of information as it does with Origin for a number of reasons. **First**, the ring-fencing rules would prohibit the discriminatory treatment of Origin's competitors in relation to information provision: see clauses 4.1(b) and 4.3.3 of the distribution ring-fencing guidelines. **Second**, in order for Origin to gain an advantage in the retail market from such discrimination it would need to inform potential customers that they would receive better service as a result of better operation between AusNet and Origin than would occur with other possible retailers. This would make it obvious that ring-fencing guidelines are being breached and prompt ACCC enforcement action, making such a theory implausible.

### **C Evolution of the NEM – storage and firming**

- 8.13 The submission notes that storage and firming technologies, including batteries, will be important for the evolution of the NEM and it will be necessary to connect such assets to transmission and distribution networks at significant scale.
- 8.14 The submission notes the AER has given this issue careful consideration in its most recent distribution ring-fencing guideline explanatory statement. There is a quote from this statement: *'For other providers of batteries, there needs to be robust safeguards in place to mitigate the potential risks from DNSP discrimination and cross-subsidisation in order to allow space for competition and innovation to develop. This is particularly important given the nascent and emerging status of battery services markets.'*
- 8.15 The submission also notes similar comments by the AER in the context of its February 2023 ring-fencing class waiver for DNSP-led community battery projects: *'Due to concerns regarding the*

## Public Version

*potential for cross subsidisation, discrimination and the subsequent impacts on competition in the market for battery services, the Distribution Ring-fencing Guideline restricts DNSPs from leasing new energy storage devices to another legal entity without a waiver from the AER.'*

- 8.16 A number of observations can be made about this section of the AGL Submission. **First**, as discussed above, there is significant competition occurring in Victoria in relation to the development of storage and firming services, including competition in relation to the development of BESS. There is no reason to think (and it is not suggested by AGL) that the Proposed Acquisition would substantially lessen competition in relation to storage and firming services.
- 8.17 **Second**, as illustrated, from the quotes provided in the AGL Submission, the AER has the capacity, with broad ranging powers, to introduce regulation in any areas where it perceives there to be a risk of discrimination and cross-subsidisation. The AER was aware of a potential risk of DNSP's leveraging their position in distribution into storage and firming services and the Distribution Ring-Fencing Guidelines now contain provisions to ensure this cannot occur. This year, similar amendments were made to Version 4 of Transmission Network Ring-Fencing Guidelines, including a new prohibition on a TNSP from entering into an agreement that grants another legal entity the right to use any energy storage device owned, operated or controlled by the TNSP, unless it is for the sole purpose of providing that TNSP with network support services.

### **D Evolution of the NEM-metering**

- 8.18 In relation to metering, the AGL Submission comments on the importance of smart meters for future service offerings. The Applicants agree with the AEMC's observations quoted in the Submission that smart meters are providing the foundation to a more connected, modern and efficient energy system that supports future technology services and innovations. The Applicants also note the highly competitive nature of the metering market, as described in section 5.3 (in particular, paragraphs 709 – 714) and section 13.1 (paragraphs 1471 and 1483) of the Application.