

25 June 2023

Dear Daniel McCracken-Hewson
 General Manager – Merger Investigation
 Australian Competition and Consumer Commission
 By email: Brookfield-Origin-Merger@acc.gov.au

ACCC – Interested Party Response: Brookfield LP
 proposed acquisition of Origin Energy Limited (Origin)
 Market Structure

Dear Daniel,

Set out below are responses to the ACCC’s consultation request dated 9 June 2023 (Ref MA1000024) as it relates to Syncline Energy Pty Ltd (Syncline).

ACCC – Question 1 and 2	
Brief Description of Syncline Energy and interest in the Proposed Acquisition	
1	Syncline Energy Pty Ltd (Syncline) is a leading renewable energy project development company based in Victoria.
2	Syncline has developed the MREH Project, a 2.4 GWh battery energy storage system (BESS) that will connect to AusNet’s 500kV network just outside of Melbourne. The project has debt, offtake and equity secured. It has agreed Generator Performance Standard with AEMO and has all planning, land and environmental approvals in place. Stage 1 is a c. \$800m investment in Australia’s energy transition.
3	MREH’s connection assets include an augmentation to the Declared Shared Network (DSN) that has both ‘contestable’ and ‘non-contestable’ components.
4	In 2022 Syncline sold part of MREH to Equis, a global green energy infrastructure fund. Equis will own 100% of MREH at final notice-to-proceed.
5	In Victoria, Syncline has also developed the \$180m Bannerton Solar Park that was commissioned in 2019 and supplies green energy to Victoria’s tram network.
6	Bannerton’s grid connection required a material expansion of AusNet’s Wemen Terminal Station.
7	Syncline is owned by Phil Galloway who has more than 30-years’ experience in the energy sector. This includes global executive roles at BHP, Esso and CS First Boston. Relevant to this submission, at Esso, Phil was an energy market analyst covering Eastern Australia. At CS First Boston he was part of the team that privatised the SEC, including preparing the first ACCC merger authorization for the disaggregation. At BHP, he led the sale of the company’s power assets and was a director of a major power consumer, BHP Billiton Aluminium based in London.

8	Phil has deep experience in the electricity sector from both a supply and large energy consumer perspective as well as connecting renewable assets to the grid.
ACCC – Question 3 Market Definition	
9	<p>Brookfield’s market definition for the electricity sector is missing three critical emerging services:</p> <ul style="list-style-type: none"> - System Strength Services¹. - Provision of firming services to independent renewable generators and retailers - Network Augmentation <p>Over the next decades, it is likely that these services will be more valuable than either wholesale generation or retail margins.</p> <p>From an engineering perspective, these services sit between generation and transmission and can be provided with a range of technologies.</p> <p>A “grid forming BESS” can support or constrain transmission capacity while also selling energy arbitrage. Or, a synchronous condenser (“synchron”) might be added as ‘transmission’ to an AusNet substation which competes with a grid forming BESS for inertia. Network augmentation could be avoided with BESS operating in ‘virtual transmission mode’; which means they store and discharge energy to operate existing lines at capacity.</p> <p>Both Origin and AusNet have very large BESS projects in Victoria; a planned 300MW AusNet BESS² at Thomastown and a 300MW Origin BESS at Mortlake.³ It is relevant that this ‘overlap’ is not central to the analysis of the Proposed Acquisition by others; which is anchored in legacy asset definitions: generation, transmission and wholesale markets.</p> <p>If both BESS were built, a ring fence at the Brookfield level would not be sufficient to convince market participants of completely independent operation in these complex and opaque activities.</p> <p>The new ‘energy transition’ services are difficult to define, and, in most cases, it is not likely that AER will create a market mechanism (similar to FCAS). As a result, either the States or AEMO will directly procure system strength from providers via an auction or direct government ownership.</p>

¹ For example, refer: <https://aemo.com.au/consultations/current-and-closed-consultations/ssrmiag>

² Refer: <https://www.ausnetservices.com.au/projects-and-innovation/battery-storage/thomastown-battery>

³ Refer: <https://www.originenergy.com.au/about/who-we-are/what-we-do/development-projects/>

	<p>Vertical Integration of Origin and AusNet would deliver a unique monopoly supplier of these system strength, firming and grid augmentation services. This outcome would deter more flexible and innovative solutions and frustrate independent service providers.</p> <p>The resultant monopoly rents would burden customers via less competitive markets and auction processes as Australia’s energy transition accelerates.</p>
10	<p>In the Victorian electricity sector, Brookfield LP would control a very material market share of these ‘new’ system strength, firming and grid augmentation services, via:</p> <p>a. AusNet owns and operates the transmission system in Victoria at 500k and 220kV. It is active in developing grid augmentation and system strength services. But added to this are AusNet’s “non-regulated activities” which include a planned 300MW BESS at Thomastown and providing connection services to other renewable generator though Augmentations to the network that have both “contestable” and “non-contestable” services bundled.</p> <p>b. Jemena (via a co-underwriter in Brookfield LP). Jemena owns electricity distribution assets in Victoria, including the 66kV system in northeast Melbourne.</p> <p>And following the Proposed Acquisition would add to this:</p> <p>c. Origin’s Energy Markets business: comprising.</p> <ul style="list-style-type: none"> o Origin’s energy retailing business, o Electricity generating assets, o Large BESS projects, for example at Mortlake o Energy wholesale and trading business, development assets relating to energy production and storage, <p>Origin is active in developing and supplying system strength solutions. It is an active customer for grid augmentation.</p> <p>d. An investment in Octopus Energy which has battery and energy development projects and the Kraken retail systems. Octopus is active in procuring grid augmentation services for various renewable energy projects from AusNet.</p>
<p>ACCC – Question 4 Vertical Relationship – Electricity Transmission and Generation Co-ownership</p>	
11	REDACTED
12	REDACTED
13	REDACTED
<p>ACCC – Question 5, 6 and 7 Adequacy of existing regulatory measures and penalties</p>	

14	REDACTED
15	REDACTED
16	REDACTED
17	REDACTED
The extent that the Proposed Undertaking would address competition concerns or affect any public benefits or detriments that may arise as a result of the Proposed Acquisition	
18	Syncline has reviewed the draft enforceable undertakings (pursuant to section 87B of the Competition and Consumer Act 2010) which include proposed ring-fencing proposals offered by three Brookfield entities (the draft undertaking)
19	We do not believe that these, or any, undertakings will be sufficient to avoid a substantial lessening of competition for electricity consumers in Victoria if the Proposed Acquisition were to proceed.
20	The Proposed Acquisition will result in vertical integration of the sector in Victoria and a “re-bundling” of regulated transmission business with currently competitive retail and generation functions.
21	We have current direct experience in connecting storage and renewable energy projects to the grid via AusNet/Brookfield and have a detailed understanding of how anti-competitive conduct might be used to leverage excess returns for ‘ring fenced’ assets.
22	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. These holes could, for example, be to frustrate competitors of Origin seeking access to the regulated assets with slow or technically complex responses that regulators don’t have the resources to challenge, or to use AusNet’s ownership of “non-contestable” DSN to leverage favourable outcomes for Origin on the “contestable” side of the ring fence.
23	Separate ownership of the regulated transmission and distribution businesses from Brookfield’s generation and retail operations would prevent Brookfield from using its regulated assets to block competition in generation, wholesale markets and retail market as well as the emerging market of ‘firming’, ‘system strength’ and ‘grid augmentation services’ discussed in paragraph 9 above.
ACCC Questions 25 to 35 - Public benefits claimed and any other public benefits or detriments arising from the Proposed Acquisition	
24	<p>25. What do you consider are the key challenges to transitioning the National Electricity Market to renewable energy sources?</p> <p>Planning approvals and grid access. Social licence for wind. Bundling of “contestable” and “non-contestable” grid Augmentation Services by TNSPs.</p> <p>26. How significant, in the scheme of Australia’s net zero targets, is Brookfield LP’s proposed investment in 14 GW of renewable generation and storage assets by 2033? To what extent would the Proposed Acquisition quicken Australia’s transition to net zero?</p>

Brookfield is not a unique provider of equity to the energy transition. Syncline has successfully raised equity for its Australian projects from other multi-national infrastructure funds on multiple occasions, including from the UK, Gulf States, Korea and Canada.

However, in the merged structure, Brookfield would become a more attractive partner to developers, given its market power through vertical integration and consumer network effects from Origin. There is a risk that it would then ‘drip feed’ new projects to the market; rationally advancing only its best projects; and ensuring that any new project did not cannibalize an existing Brookfield market. We prefer the existing structure where there is a diverse pool of investment seeking to participate in the Energy Transition.

We think the Proposed Acquisition could slow the energy transition, due to less innovation and competition in the emerging “**system strength services**”, “**firming services**” and higher than market returns for “**network augmentations**”.

It is exactly these service that are critical to Australia’s energy transition. Competition and innovation in these emerging services are vital.

The market size and revenue potential from these emerging services may be larger than traditional energy generation. They are technically complex and opaque – which means that AER will be unlikely to develop an efficient market for them and AEMO will be easily gamed.

27. If the Proposed Acquisition proceeded, how would that impact the development of renewable energy projects by parties other than Brookfield LP?

Brookfield’s market power from the Proposed Acquisition can be used by Brookfield/AusNet to lessen competition and extract higher prices from consumers. We expect that they will block competitors from accessing the grid and buy-out smaller rivals with good land and planning positions.

[REDACTED]

28. If the Proposed Acquisition did not proceed, how much renewable energy generation do you expect the market to build per year? Provide evidence for your response.

Constraints on the Energy Transition do not include an absence of market power. Instead, it comes from the challenges of getting planning and environmental approvals, grid constraints and the absence of mechanisms to procure ‘system strength’ and ‘firming’.

29. To what extent do publicly listed energy companies face greater challenges than private companies in transitioning their business to renewable energy sources, and how difficult are those greater challenges to overcome?

[REDACTED]

30. Is Brookfield LP better positioned to undertake the development of renewable generation than other investors in renewable generation and storage?

No – Brookfield LP currently has no particular competitive advantage in its Australian capability, size or funding structure. There is no shortage of global investment targeting the energy transition.

31. What are the benefits of vertical integration between generation and retail, versus investing in renewable generation and supplying to retailers via offtake agreements?

There are no benefits from Generator/Retailer combinations that are not delivered by a deep market for PPA’s and firming services. Dominant Generator/Retailer combinations would reduce the availability of PPA and firming services to new entrants. New Generators have an advantage if they are owned by a large retailer because they can be constructed without securing third party off-take.

32. Do current and announced state and federal government policies and/or incentives mean Australia is likely to reach its net zero targets regardless of whether the Proposed Acquisition proceeds?

Government procurement of projects and system strength, firming and grid augmentation will be less competitive if the market structure consist of a small number of dominant players. Inevitably these dominant players will rank high on Govt merit criteria that favours depth of track record over innovation.

33. What challenges could Brookfield LP face in implementing its green build out strategy following the Proposed Acquisition and how difficult will they be to overcome?

Brookfield will face the same issues as the rest of the market; a shortage of good sites, slow planning and environmental approvals, slow GPS approvals by AEMO.

34. Would the benefits claimed outweigh the potential public detriment to the public that would result, or would be likely to result, from the Proposed Acquisition?

Brookfield has framed the debate as a trade-off between competition policy and the energy transition. This is false. The energy transition will only be successful if innovation and new entrants can thrive. And monopoly power is not used to increase prices for the ‘new’ system strength, firming and grid augmentation services.

The public detriment outweighs and public benefit from the Proposed Acquisition.

35. Are there any other public benefits that are likely to result from the Proposed Acquisition. If so, what is the magnitude of any such benefits?

Nothing to add here.

We would be happy to discuss our comments with the ACCC or provide further information.

Please call Phil Galloway on [REDACTED] or email [REDACTED]

Kind regards

[REDACTED]

Phil Galloway

Managing Director

Syncline Energy Pty Ltd