

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by Brookfield
Infrastructure Group (Australia) Pty Ltd and DJP
XX, LLC

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1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Brookfield Infrastructure Group (Australia) Pty Ltd and DJP XX, LLC (together, the **Brookfield Parties**).

2. Background

2.1. The parties to the proposed acquisition

- (a) DJP XX, LLC is one of the Brookfield Consortium entities that is party to the Merger Agreement.
- (b) Brookfield Australia is owned by Brookfield Asset Management Inc., a global asset manager with interests in utilities, transport, energy and data infrastructure sectors across North and South America, Australia and Europe. Brookfield Asset Management Inc. trades on the New York and Toronto stock exchanges.
- (c) GIC is a private company wholly owned by the Government of Singapore, and was established in 1981 to manage Singapore's foreign reserves. GIC SI, which was set up as the private equity and infrastructure investment arm of GIC, manages investments in private equity, venture capital and infrastructure funds.
- (d) Genesee & Wyoming Inc (**GWI**) owns a portfolio of 120 short line railroads, predominantly in North America, with operations also in Europe and Australia. In Australia, GWI operates as Genesee & Wyoming Australia Holdings LP (**GWA**).
- (e) GWA provides above and below rail services in South Australia and the Northern Territory and operates rail haulage in the NSW Hunter Valley region. GWA is structured as a limited partnership and 51.1 per cent of its share capital is held by GWI with the remaining 48.9 per cent collectively held by funds advised by Macquarie Infrastructure and Real Assets (**MIRA**) and its co-investor PGGM Infrastructure Fund (**PGGM**).

2.2. The Proposed Acquisition

- (a) On 1 July 2019, entities controlled by Brookfield and GIC (together, the **Brookfield Consortium**) entered into an Agreement and Plan of Merger (**Merger Agreement**) to acquire 100 per cent of the share capital of GWI (the **Proposed Acquisition**).
- (b) One of the GWI assets which is the subject of the Proposed Acquisition is the 51.1 per cent stake (**GWI Interest**) held by GWI in GWA.

2.3. The GWI Interest Divestment

- (a) On 4 August 2019, relevant Brookfield, MIRA and PGGM entities entered into a Partnership Interest Sale Agreement (**PISA**), under which the GWI Interest will be sold to MIRA and PGGM contemporaneously (**GWI Interest Divestment**) with the completion of the Proposed Acquisition.

2.4. The ACCC's review

- (a) On 9 August 2019, the ACCC commenced its consideration of the Proposed Acquisition.
- (b) The Brookfield Parties decided as a commercial matter to divest the GWI Interest in GWA. Consistent with that decision, and as a means of facilitating timely consideration of the Proposed Acquisition, the Brookfield Parties have offered this undertaking to divest the GWI Interest, pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- (c) The Brookfield Parties consider the GWI Interest Divestment removes any overlap in the parties' activities likely to arise from the Proposed Acquisition.

2.5. **The Undertaking remedy**

- (a) The Brookfield Parties do not consider that the Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in any market. However, the Brookfield Parties have made a commercial decision to offer this undertaking pursuant to section 87B of the Act to remove any regulatory uncertainty in relation to the Proposed Acquisition.
- (b) The objective of this Undertaking is to remove any overlap in the parties' activities likely to arise from the Proposed Acquisition. The Undertaking aims to achieve this objective by placing obligations on the Brookfield Parties to:
 - (i) ensure that the Divestiture Business is divested to an Approved Purchaser;
 - (ii) create or strengthen a viable, effective stand-alone, independent and long term competitor in the market for rail services in the Northern Territory, South Australia and New South Wales;
 - (iii) ensure the Approved Purchaser has all the necessary associated assets and rights to compete effectively in the above markets;
 - (iv) maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture; and
 - (v) provide for the effective oversight of the Brookfield Parties' compliance with this Undertaking.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

- (a) this Undertaking is executed by the Brookfield Parties; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).

4. Cessation of Ongoing Obligations

Withdrawal

- 4.1. The Brookfield Parties may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

- 4.4. Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 8, 10, 11, 12, 13, 14, and 15 survive completion of the obligations in clauses 5, 6, 7, 9 and Schedule 4 and Confidential Schedule 5.

5. Divestiture of the Divestiture Business

Divestiture

- 5.1. The Brookfield Parties must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Business only to an Approved Purchaser.
- 5.2. In the event that clause 9 applies, the Brookfield Parties must not authorise the Approved Divestiture Agent to divest the Divestiture Business to a purchaser other than an Approved Purchaser.
- 5.3. The Brookfield Parties must divest, or cause the divestiture of, the Divestiture Business by:
- (a) the sale, assignment, transfer of all of the assets in Schedule 4 to an Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement within the Initial Sale Period or the Secondary Sale Period, otherwise clause 9 applies; and
 - (b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.4 to 5.5.
 - (c) the transfer of any Transferred Personnel required pursuant to clauses 5.7 to 5.8;
 - (d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.9 to 5.11; and
 - (e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.12 to 5.14.

Consents

- 5.4. The Brookfield Parties must:
- (a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Business;
 - (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
 - (c) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents; and
 - (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
 - (e) enter an agreement with the Approved Purchaser and approved by the ACCC, or vary any existing Approved Transitional Supply Agreement as required by the Approved Purchaser, in relation to any goods or services that are required for the operation of the Divestiture Business which may be affected by any failure to gain a Consent.
- 5.5. If, seven Business Days before completion of the divestiture of the Divestiture Business, the Approved Purchaser does not or is otherwise unable to obtain one or more Consents, then the Brookfield Parties must:
- (a) immediately provide to the ACCC in writing details of the:
 - (i) Consents that have not been obtained;
 - (ii) reasons why the Consents have not been obtained; and
 - (iii) information or material required to obtain the Consents.
 - (b) continue to do everything in its power to satisfy clause 5.4 as soon as possible after the completion of the divestiture of the Divestiture Business (and until such time as clause 5.4 is satisfied).
- 5.6. Even if the Brookfield Parties have complied with clause 5.4 to 5.5, it remains a breach of this Undertaking if the Brookfield Parties is unable to effect the divestiture of the Divestiture Business by reason that one or more Consents are not obtained.

Transferred Personnel

- 5.7. At the option of the Approved Purchaser, the Brookfield Parties must transfer to the Approved Purchaser:
- (a) all employees; and
 - (b) all service providers under a contract for service;

who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the Divestiture Business

and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).

- 5.8. When fulfilling its obligations under clause 5.7, the Brookfield Parties must:
- (a) encourage all Transferred Personnel to remain with the Divestiture Business, including offering incentives based on industry practice;
 - (b) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Brookfield Parties;
 - (c) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any obligations to provide services to the Brookfield Parties;
 - (d) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business; and
 - (e) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to the Brookfield Parties for a period of 12 months after the completion of the divestiture of the Divestiture Business.

Technical Assistance

- 5.9. At the option of the Approved Purchaser, the Brookfield Parties must supply to the Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Divestiture Business.
- 5.10. The Brookfield Parties must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, provides for the supply of Technical Assistance:
- (a) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
 - (b) at cost and otherwise on arm's length terms.
- 5.11. To avoid doubt, the Brookfield Parties must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Technical Assistance Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Technical Assistance Agreement, the ACCC will have regard to the criteria set out in clauses 5.9 and 5.10.

Transitional Supply Agreements

- 5.12. At the option of the Approved Purchaser, the Brookfield Parties must ensure the continued supply by the Brookfield Parties to the Approved Purchaser, under an Approved Transitional Supply Agreement, of any goods or services that are required by the Approved Purchaser in order for the Approved Purchaser to be

established as a viable, effective, stand-alone, independent and long-term competitor in the relevant markets.

- 5.13. The Brookfield Parties must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:
- (a) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;
 - (b) provides for the supply of the included goods and services at cost price; and
 - (c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.14. To avoid doubt, the Brookfield Parties must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Supply Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Supply Agreement, the ACCC will have regard to the criteria set out in clauses 5.12 and 5.13.

6. Process for approving a proposed purchaser

Potential purchasers

- 6.1. The Brookfield Parties must provide the ACCC and Approved Independent Auditor with:
- (a) the identity of any person who expresses an interest in acquiring the Divestiture Business;
 - (b) the status of negotiations with each person; and
 - (c) a copy of each person's offer to acquire the Divestiture Business, where relevant;
- at the following times:
- (d) as soon as possible following the Initial Sale Period End Date for those persons who express interest before the Initial Sale Period End Date; and
 - (e) after the Initial Sale Period End Date, within 10 Business Days of each person expressing the interest and/or providing an offer regardless of whether the person subsequently withdraws or is declined.

Provision of a notice for a Proposed Purchaser

- 6.2. To seek ACCC approval for a Proposed Purchaser, the Brookfield Parties or the Approved Divestiture Agent must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**, including a draft sale and purchase agreement, a draft transitional technical assistance agreement (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).

- 6.3. The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Secondary Sale Period.

Purchaser approved at the time the Undertaking was accepted

- 6.4. At the time this Undertaking was accepted, the ACCC also considered information of the type required in a Proposed Purchaser Notice and approved the purchasers identified in Schedule 6 as an Approved Purchaser of the Divestiture Business.

Approval of a Proposed Purchaser

- 6.5. The Brookfield Parties must follow the process for securing ACCC approval for any Approved Purchaser, other than the Approved Purchaser referred to in clause 6.4, as outlined in clauses 6.7 to 6.9 below.
- 6.6. The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice, which includes consideration of:
- (a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
 - (b) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.9 and 5.10; and
 - (c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.12 and 5.13.
- 6.7. Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.6, the factors to which the ACCC may have regard include whether the:
- (a) draft sale and purchase agreement is consistent with this Undertaking;
 - (b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (c) Proposed Purchaser is independent of the Brookfield Parties;
 - (d) Proposed Purchaser is of good financial standing;
 - (e) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (f) Proposed Purchaser is able to conduct the Divestiture Business effectively; and
 - (g) divestiture of the Divestiture Business to the Proposed Purchaser will address any potential competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.
- 6.8. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

7. Divestiture Business Protection

Protection of the Divestiture Business

- 7.1. From the Control Date, the Brookfield Parties must not sell or transfer their interest, or any assets comprising part of, or used in, the Divestiture Business (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as necessary to allow completion of the Acquisition.

The Brookfield Parties' obligations in relation to the Divestiture Business prior to completion of divestiture

- 7.2. Without limiting this clause 7, the Brookfield Parties must, from the Control Date until completion of the divestiture of the Divestiture Business, take all steps available to them to:
- (a) ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Control Date;
 - (b) continue to provide access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Control Date;
 - (c) continue to provide administrative and technical support for the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Control Date and in accordance with any plans established before the Control Date;
 - (d) continue existing Agreements relating to the Divestiture Business with customers, suppliers and/or other third parties that are in place at the Control Date;
 - (e) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
 - (f) maintain the supply of those goods and services that are part of the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Control Date;
 - (g) maintain the standard of manufacture, distribution, promotion and sale of those goods and / or services which form part of the Divestiture Business as at the Control Date; and
 - (h) carry out promotion and marketing of the goods and / or services which form part of the Divestiture Business in accordance with any plans established before the Control Date.

Personnel of the Divestiture Business

- 7.3. From the Control Date until completion of the divestiture of the Divestiture Business, the Brookfield Parties must:
- (a) In consultation with the Approved Independent Auditor, replace any:
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business who leave or will leave the Divestiture Business before divestiture;
 - (b) not terminate or vary the terms of employment or engagement (or agree to do any of those things) of any:
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any of the personnel necessary for the operation of the Divestiture Business; and
 - (c) not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Business as at the Control Date to any other business operated by the Brookfield Parties.
- 7.4. As soon as practicable after the Commencement Date, the Brookfield Parties must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with the Brookfield Parties' obligations under this Undertaking.

The Brookfield Parties' ongoing obligations in relation to the Divestiture Business

- 7.5. To the extent the Brookfield Parties have obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.9 to 5.14 of this Undertaking in relation to the Divestiture Business, the Brookfield Parties must not sell, assign, transfer, and/or licence directly or indirectly any of the assets necessary to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

- 7.6. Subject to clause 7.7, the Brookfield Parties must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Business gained through:
- (a) ownership and/or management of the Divestiture Business; or
 - (b) fulfilling any obligations pursuant to this Undertaking.
- 7.7. Clause 7.6 does not apply to information that the Brookfield Parties require to:
- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
 - (b) carry out its obligations pursuant to this Undertaking;

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of the Brookfield Parties who need to know the information to carry out the permitted purpose.

8. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 8.1. The Brookfield Parties must appoint and maintain an Approved Independent Auditor to audit and report upon the Brookfield Parties' compliance with this Undertaking.

Process for approving a Proposed Independent Auditor

- 8.2. At least 15 Business Days before the Control Date, the Brookfield Parties must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 8.3. If clauses 8.16, 8.17 or 8.18 apply, the Brookfield Parties must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 8.8 applies.
- 8.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 8.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of the Brookfield Parties;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 8.6. After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, the Brookfield Parties must by the Control Date:
- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

8.7. If:

- (a) the Approved Independent Auditor has not been appointed by the Control Date;
- (b) the Approved Independent Auditor has not been appointed within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 8.16, 8.17, or 8.18; or
- (c) if the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 8.3;

then clause 8.8 applies.

8.8. If clause 8.7 applies, the ACCC at its absolute discretion may:

- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
- (b) direct the Brookfield Parties to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

8.9. The Brookfield Parties must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (a) maintain his or her independence from the Brookfield Parties, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with the Brookfield Parties for the period of his or her appointment.
- (b) conduct compliance auditing according to the Approved Audit Plan and oversee the ongoing operation of the Divestiture Business until completion of the divestiture to an Approved Purchaser;
- (c) where requested by the ACCC, assess the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business against the factors (as relevant) in clause 6.8;
- (d) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 8.11;
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and

- (iii) where requested by the ACCC, a report on the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business following an assessment under clause 8.9(c); and
 - (e) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.
- 8.10. Brookfield must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
- (a) access the facilities, sites or operations of the Divestiture Business and the Brookfield Parties' other businesses as required by the Approved Independent Auditor;
 - (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
 - (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

Compliance Audit

- 8.11. The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:
- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
 - (b) a full audit of the Brookfield Parties' compliance with this Undertaking;
 - (c) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
 - (d) all of the reasons for the conclusions reached in the Audit Report;
 - (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
 - (f) any recommendations by the Approved Independent Auditor to improve:
 - (i) the Approved Audit Plan;
 - (ii) the integrity of the auditing process;
 - (iii) the Brookfield Parties' processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) the Brookfield Parties' compliance with this Undertaking; and

- (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 8.12. The Approved Independent Auditor is to provide an Audit Report to the ACCC and the Brookfield Parties at the following times:
- (a) within 10 Business Days after the Control Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
 - (b) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Business is completed;
 - (c) every three months after the date of provision of the last Audit Report pursuant to clause 8.12(b), until the ACCC confirms in writing to the Brookfield Parties that it is satisfied that the Brookfield Parties have fulfilled their obligations pursuant to this Undertaking; and
 - (d) a final report due three months after the last report provided pursuant to clause 8.12(c).
- 8.13. The Brookfield Parties must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- 8.14. The Brookfield Parties must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

The Brookfield Parties' obligations in relation to the Approved Independent Auditor

- 8.15. Without limiting its obligations in this Undertaking, the Brookfield Parties must:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
 - (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and

- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
- (i) directing the Brookfield Parties' personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 8;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Business and the Brookfield Parties' other businesses as required by the Approved Independent Auditor;
 - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
 - (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 8.16. The Brookfield Parties must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 8.17. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.18. The ACCC may approve any proposal by, or alternatively may direct, the Brookfield Parties to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

9. Failure to divest the Divestiture Business within the Initial Sale Period

Divestiture of the Unsold Business

- 9.1. In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Secondary Sale Period, the Divestiture Business becomes an unsold business (**Unsold Business**) and the provisions of this clause 9 apply.

Obligation to appoint an Approved Divestiture Agent

- 9.2. From the end of the Secondary Sale Period, the Brookfield Parties must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Business.

Process for approving a Proposed Divestiture Agent

- 9.3. The ACCC may at any time from the commencement of the Secondary Sale Period require the Brookfield Parties to provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**) (including draft terms of appointment, a draft business sale agreement, and draft marketing and sale plan). In any event, the Brookfield Parties must, at least 15 Business Days prior to the end of the Secondary Sale Period, if the divestiture of the Divestiture Business has not been completed, provide the ACCC with a Proposed Divestiture Agent Notice.
- 9.4. If clauses 9.14, 9.15 or 9.16 apply, the Brookfield Parties must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs, otherwise clause 9.9 applies.
- 9.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.
- 9.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Divestiture Agent, the factors to which the ACCC may have regard include whether the:
- (a) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
 - (b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of the Brookfield Parties;
 - (c) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
 - (d) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

Appointment of the Approved Divestiture Agent

- 9.7. After receiving written notice from the ACCC of its approval of the Proposed Divestiture Agent, the draft terms of appointment, draft business sale agreement and draft marketing and sale plan, the Brookfield Parties must within two Business Days:
- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

9.8. If:

- (a) the Approved Divestiture Agent has not been appointed within 10 Business Days after the Divestiture Business becomes an Unsold Business;
- (b) the Approved Divestiture Agent has not been appointed within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 9.14, 9.15 or 9.16; or
- (c) if the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 9.4;

then clause 9.9 applies.

9.9. If clause 9.8 applies, the ACCC may, at its absolute discretion:

- (a) identify and approve a person as the Approved Divestiture Agent, includes approving the draft terms of appointment of the Approved Divestiture Agent, draft business sale agreement and draft marketing and sale plan; and/or
- (b) direct the Brookfield Parties to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

Obligations and powers of the Approved Divestiture Agent

9.10. The Brookfield Parties must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:

- (a) divest the Unsold Business only to an Approved Purchaser, at no minimum price;
- (b) maintain his or her independence from the Brookfield Parties, apart from appointment to the role of Approved Divestiture Agent, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with the Brookfield Parties for the period of his or her appointment;
- (c) not use any confidential information gained through the divestiture of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent;
- (d) follow the Approved Marketing and Sale Plan;
- (e) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Business as quickly as possible using the Approved Business Sale Agreement;
- (f) co-operate with the requests of any Approved Independent Auditor appointed pursuant to this Undertaking;
- (g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:

- (i) information regarding the implementation of the Approved Business Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
 - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 9.11(d));
 - (v) the efforts made to sell the Unsold Business;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Business; and
 - (viii) any other information required by the ACCC.
- (h) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
- (i) any moneys derived from the divestiture of the Unsold Business;
 - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
 - (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 9.11(d));
- (i) immediately inform the ACCC of:
- (i) any issues that arise in relation to the implementation of the Approved Sale and Purchase Agreement and any Approved Marketing and Sale Plan;
 - (ii) non-compliance with this Undertaking by any person named in this Undertaking;
 - (iii) any offers for the Unsold Business;
- (j) accept any offer for the Unsold Business upon instruction from the Brookfield Parties given in accordance with clause 9.13(d); and
- (k) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.

9.11. The Brookfield Parties must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney

conferring all necessary power and authority on the Approved Divestiture Agent to:

- (a) negotiate with purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
- (b) execute any agreements with the Approved Purchaser required pursuant to clause 6.6;
- (c) upon instruction pursuant to clause 9.13(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Business Sale Agreement; and
- (d) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.

9.12. Any irrevocable power of attorney granted pursuant to clause 9.11 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 9.14, 9.15 and 9.16, or in the event that the Unsold Business is divested in accordance with this Undertaking.

The Brookfield Parties' obligations in relation to the Approved Divestiture Agent

9.13. Without limiting its obligations in this Undertaking, the Brookfield Parties must from the end of the Secondary Sale Period:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
- (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions; including:
 - (i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent;
 - (iii) paying such fees as are agreed between the Approved Divestiture Agent and the Brookfield Parties (but not fees contingent on the price to be obtained for the Unsold Business); and
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and the Brookfield Parties within 15 Business Days after the end of the Secondary Sale Period, the Brookfield Parties agree to pay such fees as are directed by the ACCC;

- (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
 - (v) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (vi) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Agent; and
 - (vii) providing to the Approved Divestiture Agent any information, documents or other assistance he or she considers necessary for carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;
- (d) within three Business Days after receiving notice from the ACCC pursuant to clause 6.6, the Brookfield Parties must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.6; and
- (e) other than in accordance with clause 9.13(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Business.

Resignation, revocation or termination of the Approved Divestiture Agent

- 9.14. The Brookfield Parties must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Business.
- 9.15. The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.16. The ACCC may approve any proposal by, or alternatively may direct, the Brookfield Parties to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

10. Notification of key dates and ACCC requests for information

- 10.1. The Brookfield Parties must notify the ACCC and each Undertaking Appointment in writing of:
 - (a) the anticipated date of the Control Date, at least five Business Days before that date;
 - (b) the anticipated date of the completion of the divestiture of the Divestiture Business or Unsold Business, at least five Business Days before that date;
 - (c) the occurrence of the Control Date, within one Business Day of that date; and
 - (d) the occurrence of the completion of the divestiture of the Divestiture Business or Unsold Business, within one Business Day of that date.

- 10.2. The ACCC may direct the Brookfield Parties in respect of its compliance with this Undertaking to, and the Brookfield Parties must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Brookfield Parties' custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
 - (d) Any direction made by the ACCC under clause 10.2 will be notified to the Brookfield Parties, in accordance with clause 16.2.
- 10.3. In respect of the Brookfield Parties' compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 10.4. The Brookfield Parties will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 10.3.
- 10.5. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 10 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 10.6. The ACCC may in its discretion:
- (a) advise any Undertaking Appointment of any request made by it under this clause 10; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 10.
- 10.7. Nothing in this clause 10 requires the provision of information or documents in respect of which the Brookfield Parties have a claim of legal professional or other privilege.

11. Disclosure of this Undertaking

- 11.1. The Brookfield Parties and the ACCC agree that Schedules 5, 6, 7 and 8 will remain confidential until after the completion of the divestiture of the Divestiture Business or Unsold Business.
- 11.2. The Brookfield Parties acknowledge that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Confidential Schedules 5, 6, 7 and 8.
- 11.3. The Brookfield Parties acknowledge that the ACCC may, subject to clause 11.1:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 11.4. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by section 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 11.5. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

12. Obligation to procure

- 12.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of the Brookfield Parties to take or refrain from taking some action, the Brookfield Parties will procure that Related Body Corporate to take or refrain from taking that action.

13. No Derogation

- 13.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by the Brookfield Parties of any term of this Undertaking.
- 13.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that the Brookfield Parties do not fully implement and/or perform their obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

14. Change of Control

- 14.1. In the event that a Change of Control is reasonably expected to occur, the Brookfield Parties must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on the Brookfield Parties pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified the Brookfield Parties in writing that a section 87B undertaking under this clause is not required.

15. Costs

- 15.1. The Brookfield Parties must pay all of their own costs incurred in relation to this Undertaking.

16. Notices

Giving Notices

- 16.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au

Attention: Executive General Manager
Merger and Authorisation Review Division

With a copy sent to: mergersru@acc.gov.au
Attention: Director, Remedies Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

- 16.2. Any notice or communication to the Brookfield Parties pursuant to this Undertaking must be sent to:

Name: Ray Neil / Michael Ryan

Address: Brookfield Infrastructure Group LLC, c/o Brookfield Asset Management, Level 24, 135 King Street, Sydney NSW 2000

Email Address: Ray.Neill@brookfield.com / Michael.Ryan@brookfield.com

With a copy sent to:

Name: Simon Muys / Jeremy Jose

Address: Gilbert + Tobin, Level 22, 101 Collins Street, Melbourne VIC
3000

Email Address: smuys@gtlaw.com.au / jjose@gtlaw.com.au

- 16.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 16.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 16.5. The Brookfield Parties must notify the ACCC of a change to its contact details within three Business Days.
- 16.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 16.3 and 16.4, will be taken to be received.

17. Defined terms and interpretation

Definitions in the Dictionary


- 17.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

- 17.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by Brookfield Infrastructure Group (Australia) Pty Ltd pursuant to section 127(1) of the *Corporations Act 2001* by:



Signature of director



Signature of a ~~director~~/company secretary

Stewart Upson

Michael John Ryan

Name of director (print)

Name of ~~director~~/company secretary (print)

Date 11/11/2019

Date 11/11/2019

Executed by DJP XX, LLC by an officer thereunto duly authorized:



Signature of Authorised Officer

Fred Day

Name (print)

Date 11/11/2019

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

12/11/19

Date

and signed on behalf of the Commission:

A handwritten signature in black ink, appearing to read "Ross Sim". The signature is written in a cursive style with a large initial "R".

Chair

12/11/19

Date

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Acquisition is defined in clause 2 of this Undertaking.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

Approved Business Sale Agreement means the standard form contract for the divestiture of the Unsold Business which has been approved by the ACCC in accordance with the terms of this Undertaking.

Approved Divestiture Agent means the person approved by the ACCC and appointed under clause 9 of this Undertaking.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 8 of this Undertaking.

Approved Marketing and Sale Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Business.

Approved Purchaser means the person approved by the ACCC under clause 6 of this Undertaking.

Approved Sale and Purchase Agreement means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which the Brookfield Parties will divest the Divestiture Business to the Approved Purchaser and Approved Purchaser will acquire the Divestiture Business from the Brookfield Parties.

Approved Terms of Appointment means the terms of appointment for the Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.

Approved Transitional Supply Agreement means any agreement, for the supply of goods or services (other than Technical Assistance) by the Brookfield Parties to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Approved Transitional Technical Assistance Agreement means any agreement, for the supply of Technical Assistance by the Brookfield Parties to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given to it in clause 8.11 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Brookfield Consortium has the meaning given to it in clause 2.2(a) of this Undertaking.

Brookfield Parties has the meaning given to it in clause 1.1 of this Undertaking.

Change of Control means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of the Brookfield Parties to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- (b) the sale or transfer of any assets necessary, or which may be necessary, to enable the Brookfield Parties to continue to comply with this Undertaking in its entirety.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Control Date means the date on which the Acquisition is completed.

Consents means any Government Consents or Third Party Consents.

Corporations Act means the *Corporations Act 2001* (Cth).

Divestiture Business means the GWI Interest, being the item described in Schedule 4 to this Undertaking.

Entities Connected has the meaning given by section 64B of the Corporations Act.

Establishment Audit has the meaning given to it in clause 8.12 of this Undertaking.

Government Consents means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

Holding Company has the meaning given by section 9 of the Corporations Act.

Initial Sale Period as defined in Confidential Schedule 5 to this Undertaking.

Initial Sale Period End Date as defined in Confidential Schedule 5 to this Undertaking.

Material Change means any change to the structure, attributes, extent or operations of the Divestiture Business or product or service sold by a Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Business.

Material Contract means any Agreement that is necessary for the operation of the Divestiture Business.

PISA as defined at clause 2.7.

Proposed Divestiture Agent means a person named in a Proposed Divestiture Notice.

Proposed Divestiture Agent Notice has the meaning given to it in clause 9.3 of this Undertaking.

Proposed Independent Auditor means a person named in a Proposed Independent Auditor Notice.

Proposed Independent Auditor Notice has the meaning given to it in clause 8.2 of this Undertaking.

Proposed Purchaser means a person named in a Proposed Purchaser Notice.

Proposed Purchaser Notice has the meaning given to it in clause 6.2 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Related Entities has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

Related Parties has the meaning given to it by section 228 of the *Corporations Act 2001* (Cth).

Secondary Sale Period is defined in Confidential Schedule 5 to this Undertaking.

Subsidiary has the meaning given by section 9 of the Corporations Act.

Technical Assistance includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Business, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

Third Party Consents means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

Transferred Personnel has the meaning given to it in clause 5.7 of this Undertaking.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Undertaking Appointment means the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

Unsold Business has the meaning given to it in clause 9.1 of this Undertaking.

2. Interpretation

2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;

- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:

- (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, the Brookfield Parties will do everything reasonably within their power to ensure that their performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
- (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Schedule 2 – Proposed Purchaser Notice Form

Please note in relation to information given on or in relation to this form, giving false or misleading information is a serious offence.

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – Brookfield section 87B Undertaking to the ACCC

Address: mergers@acc.gov.au

Attention: Executive General Manager - Merger and Authorisation Review Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit, Merger Coordination and Strategy Branch,
Merger and Authorisation Review Division

- 1) In relation to the Proposed Purchaser, please provide the following information:
 - (a) Name of the Proposed Purchaser:
 - (b) Address:
 - (c) Contact name:
 - (d) Telephone number:
 - (e) Other contact details:
- 2) Please attach a submission containing the following information to this form:
 - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
 - (b) details of the Proposed Purchaser's experience in the relevant market/s.
 - (c) the names of the [owner/s and the directors (delete any that do not apply)] of the Proposed Purchaser.
 - (d) details of any of the following types of relationships between the Brookfield Parties and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) any of the the Brookfield Parties and the Proposed Purchaser are Associated Entities;
 - (ii) any of the Brookfield Parties is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with any of the Brookfield Parties;
 - (iv) any of the Brookfield Parties and the Proposed Purchaser are Related Entities;

- (v) any of the Brookfield Parties and the Proposed Purchaser are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with any of the Brookfield Parties is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) any of the Brookfield Parties and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
 - (viii) the Proposed Purchaser is a supplier of any of the Brookfield Parties or has been in the past three years;
 - (ix) any of the Brookfield Parties is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between any of the Brookfield Parties and the Proposed Purchaser that allows one to affect the business decisions of the other.
- (e) a section addressing the following factors, including any information adverse to the Proposed Purchaser, in the power, possession or control of the Brookfield Parties:
- (i) whether the draft sale and purchase agreement is consistent with this Undertaking;
 - (ii) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (iii) whether the Proposed Purchaser is of good financial standing;
 - (iv) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (v) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
 - (vi) whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser; and
 - (vii) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

3) Please also attach to this form:

- (a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking.
- (b) the finalised draft of any transitional technical assistance agreement for approval by the ACCC in accordance with this Undertaking.

- (c) the finalised draft of any transitional supply agreement for approval by the ACCC in accordance with this Undertaking.
- (d) any documents required to support the information provided by the Brookfield Parties pursuant to this form.

Schedule 3 – Undertaking Appointment

This form sets out the information required by the ACCC in relation to proposed appointment of the following positions under the Undertaking:

- Independent Auditor; or
- Divestiture Agent;

(the **Undertaking Appointments**).

This form is to be used for each of the above appointments.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

Method of Delivery to the ACCC

The completed Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line (*proposed* [only include relevant Undertaking Appointment i.e. Independent Auditor/Divestiture Agent] *Form* – [insert name of undertaking] to the below email addresses:

- 1) mergers@acc.gov.au

Attention: Executive General Manager
Merger and Authorisation Review Division

- 2) **With a copy sent to:**

mergersru@acc.gov.au

Attention: Director
Remedies Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

Information Required

The ACCC requires the following information in order to assess a proposed Independent Auditor or Divestiture Agent (i.e. the relevant Undertaking Appointment).

- 1) Proposed Undertaking Appointment Details:

(a) the name of the Proposed Undertaking Appointment; and

(b) the name of the proposed Undertaking Appointment's employer and contact details including:

- Address;
- Contact name;
- Telephone number;
- Other contact details.

- 2) A submission containing the following information:

- (a) details of the [Undertaking Appointment]'s qualifications and experience relevant to his or her proposed role pursuant to the Undertaking
 - (b) the names of the [owner/s and the directors (delete any that do not apply)] of [the Undertaking Appointment's employer]
 - (c) details of any of the following types of relationships between the Brookfield Parties and [the Undertaking Appointment] or [the Undertaking Appointment's employer] or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) any of the Brookfield Parties and [the Undertaking Appointment's employer] are Associated Entities
 - (ii) any of the Brookfield Parties is an Entity Connected with [the Undertaking Appointment's employer]
 - (iii) [The Undertaking Appointment's employer] is an Entity Connected with any of the Brookfield Parties
 - (iv) any of the Brookfield Parties and [the Undertaking Appointment's employer] are Related Entities
 - (v) any of the Brookfield Parties and [the Undertaking Appointment's employer] are Related Parties
 - (vi) any Related Party, Related Entity or Entity Connected with any of the Brookfield Parties is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment]
 - (vii) any of the Brookfield Parties and [the Undertaking Appointment] or [the Undertaking Appointment's employer] have a contractual relationship or had one within the past three years, other than those attached to this form
 - (viii) [the Undertaking Appointment's employer] is a supplier of any of the Brookfield Parties or has been in the past three years
 - (ix) any of the Brookfield Parties is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years, and
 - (x) any other relationship between any of the Brookfield Parties and [the Undertaking Appointment] or [the Undertaking Appointment's employer] that allows one to affect the business decisions of the other, and
 - (d) details of any existing or past contractual relationships between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC within the past three years.
- 3) A document outlining the terms of appointment for the proposed Undertaking Appointment. This should identify the basis on which fees will be paid, including disclosure of any proposed performance-based fees.

Specific Information required for Undertaking Appointments

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

Proposed Independent Auditor

- 1) A finalised draft audit plan for the Divestiture Business, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the establishment audit and the Audit Report.

Proposed Divestiture Agent

- 1) The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with the Brookfield Parties. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
- 2) The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business.

Schedule 4 – Divestiture Business

The 51.1% interest held by GWI in GWA.

Confidential Schedule 5

Schedule 6 – Approved Purchaser

The Approved Purchaser of the Divestiture Business at the time this Undertaking is accepted are:

Macquarie Australian Infrastructure Management 1 Limited (ACN 077 595 012) as trustee for the PGGM Ibis LP Trust whose registered office is at Level 6, 50 Martin Place, Sydney NSW 2000 (**PGGM**) (in respect of the limited partnership interest in GWA)

and

Scissor Holdings Pty Limited (ACN 614 520 302) whose registered office is at Level 8, 50 Martin Place, Sydney NSW 2000 (**MIRA GP**) (in respect of the general partnership interest in GWA).