



Mr Daniel McCracken-Hewson
General Manager
Merger Investigations Branch
Australian Competition and Consumer Commission
By email

Dear Mr McCracken-Hewson,

Brookfield and MidOcean application for merger authorisation for proposed acquisition of Origin Energy Limited

I refer to your letter of 19 July 2023 seeking feedback from ENGIE in Australia & New Zealand (ENGIE) regarding the abovementioned application. This letter responds to the questions raised by the ACCC.

It is important to note that ENGIE is not suggesting that Brookfield, Intellihub, AusNet, or Origin Energy would plan to undertake actions that provide those parties with an unfair advantage and/or that disadvantages other market participants. Nevertheless, where there is the potential for undue influence to be exerted to benefit one party over another, the risk of that occurring will remain. Thus, even the perception of marginal favouritism in decisions could have a negative implication.

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

In what ways could a vertically integrated electricity generation and transmission network business realistically discriminate against its generation competitors? For example, how realistic or practically achievable is it that it might discriminate by delaying connections of competing generation projects, inflating costs to competing generators through discriminatory pricing, disclosing information to provide its vertically integrated generation business with competitive advantages or prioritising certain augmentations to the network.

In today's market, there is already broad concern that networks are not sufficiently orientated to the needs of generation development and operation, and that the competitive and non-competitive arms of network businesses are not sufficiently ring-fenced. Whether these concerns are justified may need to be the subject of a separate assessment, but it should not be surprising that common ownership between generators and transmission companies would further extend this unease.

Only a decade ago, the Ministerial Council on Energy released a regulation impact statement consultation paper on co-ownership of generation and transmission, which much like the 1993 Hilmer Report, did not look upon such co-ownership favourably. While it appears the policy agenda at the time crowded out this issue's finalisation, it seems not to have been progressed, the intent at the time was a national prohibition on material co-ownership of generation and transmission (i.e., didn't cover localised transmission / off grid

etc). Hence, the basis for holding concerns over co-ownership are well established and shared by policy makers and competitors alike. The concerns are generally expressed as:

- raising the price of electricity transmission;
- lowering the quality and quantity of localised electricity transmission;
- reducing the timeliness of transmission to competitors while making strong provision for affiliate generators;
- timing and pricing of connection services; and
- outage planning.

On timing and pricing of connection services, there is a clear risk that in a vertically integrated business, the development arm exerts influence on the transmission entity to get privileged information or even receive priority access to connections and grid augmentations. This risk would distort fair competition in a highly congested network. It isn't a challenge to imagine a circumstance where two development sites, physically side by side, are both trying to develop at speed and connect to the market. Whether real or perceived, the site not owned by the integrated entity is likely to have strong doubts it is going to be treated fairly and equally.

On outage planning, there is a perceived risk that the network business could schedule transmission outages that could benefit the generation business. In the market, transmission outages can have a significant impact on trading outcomes. For example, outages could be planned to correspond with plant outages to better manage risk exposures or to constrain other generators.

Whether these issues can be readily identified by the regulator and managed post-acquisition is unclear.

Please explain the likely impact / harm (including any flow-on effects) that would arise if a vertically integrated electricity generation and transmission network business discriminated against its generation competitors.

See above.

Development project viability is greatly affected by connections timing and the costs associated with a transmission connection agreement. A more difficult negotiation with a network, compared to a competitor, can see that competitor connecting well ahead of similar projects. Unless there is an obligation to offer the same terms and conditions, and same pricing, it is not clear how this soft favouritism can be readily managed (notwithstanding the true economic cost of charging related businesses versus non-related businesses differs so an advantage remains).

What incentives would a vertically integrated electricity generation and transmission network business have to discriminate against its generation competitors? In answering this question, please explain if those incentives change depending on:

- whether the business is also vertically integrated in electricity retailing with a larger customer base than generation capacity, and/or
- the number and size of co-owned generation that is connected or looking to be connected to the vertically integrated transmission network.

As transmission is both a compliment and competitor to generation, choices made by relevant network businesses have relevance to generation businesses. While the ACCC has asked a series of questions about retail, in some ways, for this analysis, retail is simply a route to market for a generation business and therefore the generation and retail portfolio can be viewed simultaneously (i.e., they are a natural hedge for each other and decisions in one are made with the other in mind).

Traditionally, this has meant that analysts do not see co-owning transmission or distribution, and retail as a point of competitive concern. In a market where retail and generation are separated, this indeed makes sense; however, in a market where retail and generation are two sides of the same coin, then decisions can affect both (i.e., a delay in connecting a generator also impacts the load that would have used or hedged with that assets energy / capacity and likewise, an act which reduces a retailer's competitiveness reduces customers acquired, hedges bought, etc).

In what ways could a vertically integrated electricity retail and distribution network business realistically discriminate against its retail competitors? For example, how realistic or practically achievable is it that it might discriminate by delaying connections to competing retailer customers, inflating costs to competing retailers through discriminatory pricing, disclosing information to provide its vertically integrated retail business with competitive advantages, prioritising certain maintenance, augmentations or improvements or selectively targeting outages or event load shedding.

A vertically integrated distribution network business would be required to comply with ring-fencing obligations administered by the Australian Energy Regulator (AER). Under the ring-fencing obligations, the vertically integrated business would have requirements for functional, accounting, and legal separation with affiliate entities. The AER is also responsible for approving five-year revenue determinations and annual pricing proposals for distribution businesses, which provide protection against discriminatory pricing practices.

The vertically integrated business would need to submit annual ring-fencing compliance reports to the AER. An annual compliance report must be accompanied by an assessment of compliance with each ring-fencing provision by a suitably qualified independent authority. The AER reviews these reports each year and provides findings in its 'annual compliance and enforcement report'.

The extent that the vertically integrated business could discriminate against its competitors would depend on whether the business has sufficient controls to maintain compliance with its ring-fencing obligations and the AER's ability to identify and/or act in response to non-compliance.

Please explain the likely impact / harm (including any flow-on effects) that would arise if a vertically integrated electricity retail and distribution network business discriminated against its retail competitors. In answering this question, please explain if the likely impact / harm changes depending on the presence and size of other distribution networks within the state in question.

If the vertically integrated business were able to discriminate against its retail competitors, we expect that this would involve:

- preferential network tariffs (including, preferential treatment when it comes to the payment of network tariff invoices – including late payment);
- preferential service order pricing and response for (including, higher completion rates and shorter timeframes for connections/disconnections and other service orders that require truck rolls);

- demand response opportunities are prioritised for customers;
- preferential opportunities for to participate in grid-scale battery projects;
- customers receiving priority for solar system connections, as well as higher export limits and avoidance of export charges; and
- receiving preference and advantages in relation to new technologies, in the context of growing network limitations (this may include Virtual Power Plants and Electric Vehicle charging).

The practical impact of this type of discrimination would be that the integrated business would have an undue cost and service advantage over its competitors in the relevant network region. As network costs are a significant proportion of the total cost of supplying retail energy services, any undue advantage could substantially distort the market in that location.

What incentives would a vertically integrated electricity retail and distribution network business have to discriminate against its retail competitors?

If there were no barriers from doing so, we expect that the vertically integrated business would seek to provide advantages to its affiliated entities to the detriment of competitors.

However, as noted in response to earlier questions, there are regulations in place to specifically prevent network businesses from discriminating in this manner. There may be opportunities to enhance existing protections through further increases in the transparency of network performance (for example, in relation to metrics on service order completion).

Despite the regulatory framework that is in place, we expect that an integrated network business would continue to have incentives to provide its generation and retail arms with advantages due to their shared ownership (for example, may be more open to waiving fees, actioning service orders, and generally being more responsive than other generation and retail competitors).

In what ways could a vertically integrated electricity retail, distribution network and smart meter business realistically discriminate against its retail or smart meter competitors? For example, how realistic or practically achievable is it that it might discriminate through sharing of competitively sensitive information, exclusivity arrangements in respect of the smart metering business, bundling retail services with smart meter or behind the meter products or services.

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

The main opportunity for the vertically integrated business to discriminate against its retail competitors is through providing itself with lower metering-related prices and better service response than provided to its retail competitors.

For sites that ENGIE supplies with an existing Intellihub smart meter, it would be unlikely to replace the meter with an alternative supplier's meter unless Intellihub's pricing and/or service justified incurring that cost. That is, the cost of an alternative meter would likely be the key barrier to accessing services from an alternative supplier at a site with an existing Intellihub smart meter.

Please explain the likely impact / harm (including any flow-on effects) that would arise if a vertically integrated electricity retail, distribution network and smart meter business discriminated against its retail or smart meter competitors.

The benefits of holding a metering business would likely be the analytical insights that extend to other retailers' customers. ENGIE assumes limits on sharing this information would be appropriately enforced.

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

- preferential service order pricing (including, preferential treatment when it comes to the payment of invoices – including late payment); and
- preferential service order response and priority.

Retail competitors can currently access alternative smart metering suppliers when installing a new meter; however, as noted in our response to the previous question, they will likely need to continue working with Intellihub at sites that have an existing Intellihub meter installed.

Intellihub may have incentives to set relatively higher prices for retail competitors, which are maintained at a level that does not sufficiently incentivise these retail competitors to replace the Intellihub meter with a competing supplier's meter. That is, Intellihub could seek to maintain its profitability by cross subsidising any price reductions to itself through higher prices to its retail competitors.

The practical impact of this type of discrimination would be that its retail business would have an undue cost and service advantage over its retail competitors in regions that have a high proportion of Intellihub meters installed. Nonetheless, as metering costs are not currently a significant proportion of the total cost of supplying retail energy services, any undue advantage is unlikely to significantly distort the market.

If Intellihub smart meters were to become more ubiquitous and alternative suppliers were to exit the market, the advantage to this shared ownership may become more significant.

What incentives would a vertically integrated electricity retail, distribution network and smart meter business have to discriminate against its retail or smart meter competitors?

See above.

Please do not hesitate to contact me at your convenience to further discuss.

Yours sincerely,



Jamie Lowe

Head of Regulation,

Compliance, and Sustainability