



Record of oral submission to the ACCC

Matter name	Brookfield and MidOcean proposed acquisition of Origin Energy Limited - application for merger authorisation (MA1000024)		
ACCC parties	Tess Macrae, Will Richards, Nick Cooke, Tanya Hobbs, Hugh Cosolo, Katie Latham, Rachel Collins		
Other parties	Tony Wood		
Date	Monday, 03 July 2023		
Time	03:00 pm		
Merger Authorisation no.: MA1000024			
Phone to <input type="checkbox"/>	Phone from <input type="checkbox"/>	Teams Meeting <input checked="" type="checkbox"/>	Other <input type="checkbox"/>

This was a meeting between the Grattan Institute and the ACCC to allow the Grattan Institute to provide an oral submission in relation to Brookfield and MidOcean’s proposed acquisition of Origin.

Grattan Institute made the following oral submission.

Market definition

1. Grattan Institute noted that markets are changing. Increasingly the energy market is a single market, in comparison to separate gas and electricity markets. This is a challenge for the energy regulator. There are also some markets being re-nationalised, most notably in Queensland. Other states and territories are at different points across the spectrum.

Risk of information sharing between AusNet and Brookfield related entities

2. Grattan Institute considers the main concern is the link between the existing AusNet business and Origin’s retail business. The boundaries between regulated and unregulated businesses are becoming less clear. One example is battery storage which can be used by both a distribution network and as a generation asset. It would be possible for a business that owns a distribution network, generation and retail businesses to use this knowledge against one of their competitors, for example because network owners best understand where to place batteries. However, this structure has not happened to-date and the Grattan Institute has not heard such concerns. It is unclear whether this sort of information sharing could be prevented by the proposed undertakings, or whether a network business with a local storage

facility would be anti- or pro-competitive, but there is a risk. While this can be dealt with through ring-fencing arrangements, it may be a limited tool on its own.

3. Grattan Institute noted that some issues raised by the Proposed Acquisition could be addressed through the draft undertaking and/or employment arrangements. The risk that the draft undertaking is not sufficient is small. Ideally, regulation is also sufficient so that information sharing would not occur. The only obvious solution would be to divest the AusNet business.

Ability for Brookfield to favour its related entities

4. Grattan Institute submits it is less likely Brookfield would be able to favour related entities in the electricity market compared to gas markets, because the electricity market is a reasonably transparent gross pool market.
5. In relation to gas markets, Grattan Institute noted that gas pipelines are substantially contracted to shippers for annual and daily quantities, but sometimes spare capacity that is contracted is not consumed. This is a possible expensive way to keep competitors off the pipeline by limiting capacity in the market. It is complex but can create circumstances whereby customers feel like they cannot access capacity. There could be regulatory arrangements that deal with this, however, it is difficult for a regulator to detect it in situations where market participants do not take action. The draft undertaking might not necessarily solve this problem.

Ability and incentive for a TNSP to discriminate against a generator

6. Grattan Institute noted it is unclear whether a market structure could emerge in Victoria whereby AusNet could discriminate against non-Origin generators. It is unlikely that AusNet would be able to discriminate because the government is going down the path in which TNSPs would not have more power. However, Grattan Institute also submits that it does not know how the market structure would look in the future and the structure by which decisions would be made is uncertain, so it cannot definitely say discrimination would not occur.
7. Grattan Institute also considers that Australia does not have a common way of building out transmission networks; each state does it differently. In New South Wales, AEMO Services runs the process by which transmission capacity is built and generators bid to be connected and get access to certain capacity. For Victoria, it is not clear how this process will be managed. While AEMO has previously been the transmission planner, VicGrid has been recently introduced and it is not yet clear how it will manage the process. In Queensland, transmission investment is constrained to the government so there are no competition concerns.

Overview of Applicants' claimed public benefits and the counterfactual

8. Grattan Institute submits the Applicants' public benefits argument is not particularly compelling. There is no reason why Origin could not pursue a similar strategy without Brookfield acquiring it.
9. Grattan Institute submits that if Brookfield purchased AGL, Origin would have pursued another strategy, albeit over a possibly longer timeframe. The counterfactual is not provable and should not be a strong consideration as to whether the ACCC would authorise or not authorise the Proposed Acquisition.

Benefits of vertical integration between generation and retail

10. Grattan Institute submits that vertical integration is sometimes a benefit and sometimes it is not, depending on market circumstances. On the surface, the

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

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

11. Grattan Institute submits Brookfield is well-placed to develop renewable generation because of its exposure to the sector overseas and the ability to secure supply of components. However, Australia could find itself in a supply chain that is constrained. While Brookfield is well-placed to participate in a global supply chain, there are other businesses that are well-placed as well.
12. Grattan Institute considers that private companies, compared to publicly listed companies, can do some things more easily. For example, private companies do not have certain regulatory requirements and obligations, such as AGMs. However, Brookfield and private equity firms have strong discipline about what they invest in and have rigorous regulatory and financial processes internally. The willingness to take market risks in transitioning a business seems more associated with whether it has a free-willing or entrepreneurial CEO.
13. In relation to Brookfield's access to capital, providing a company (like Origin) with a greater capacity to spend will not help the transition because the problem is not money. There is enough capacity to build the renewable generation required between Origin, Alinta, Snowy Hydro and Energy Australia.

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

14. Grattan Institute submits in capital intensive industries, businesses will make announcements to scare off the opposition, as much as to pursue new projects. When Snowy 2.0 was announced, there were pumped hydro projects that got put on hold. However, crowding out would only occur when two firms are looking to build a similar plant in the same region and one firm announcing a development could dissuade the other. Considering the amount that needs to be spent on transmission networks and renewable energy storage, while \$20 billion is significant capital, it is not likely to dominate the market or scare anybody off. It may be hard for a small player to compete, but that is regardless of the Proposed Acquisition.

Challenges transitioning the NEM to renewable energy sources

15. Grattan Institute submits there are three phases associated with transitioning the NEM to renewable energy sources:
 - The first was to build more renewable energy generation to meet federal and state targets. The issue was building wind and solar projects in areas where transmission capacity already existed, or putting solar panels on rooftops. Renewable energy projects have already been built where there is existing transmission capacity.
 - Grattan Institute noted that the second (current) challenge is building the transmission capacity necessary, in a time where there are supply shortages for people and materials. Community push-back to transmission lines was also underestimated and the cost of building underground transmission lines would be very expensive. Building transmission capacity at manageable costs

and on-time is difficult. Most projects are two, to three or four times over budget. It is going to be hard to get transmission capacity on track. The Proposed Acquisition does not affect this, in either a positive or negative way.

- The third challenge is what happens when Australia has an electricity system that is made up of wind and solar generation assets. Grattan Institute noted that AEMO and Grattan's own modelling suggest there would be gas-fired power to provide backup alongside some pumped hydro projects. The problem is that Australian weather patterns can create 'dark doldrums' when there is no wind or solar power. This is a while-off in a physical sense. However, Tasmania is effectively 100% renewables. South Australia is sometimes generating twice what it needs, but in other times needs to import a substantial share of its power demand. South Australia is not 100% renewables all of the time. The Australian Capital Territory is the same. Electricity currently comes to the Australian Capital Territory from a grid mostly supplied by coal. If brown-coal generation assets close in Victoria and there is no wind generation in South Australia or Victoria, that is when a problem would arise. The Proposed Acquisition does not improve or worsen this challenge.

Government policy

16. Grattan Institute submits that the next challenges to shifting the NEM to renewable energy sources are associated with federal and state policies rather than who owns the business. Australia has a pipeline of renewable and hydrogen projects that investors would finance, but the question is whether the risk put in place by government policy is creating more of a challenge to the transition rather than the lack of capital or ownership of a retail business.

Transmission network capacity and considerations

17. Grattan Institute submits that congestion management, connections and building the grid are the biggest current issues in the electricity market. The price of gas and cost of renewable energy itself is important, but the biggest impediment to transitioning the NEM to renewable energy sources is building out the transmission network and connection arrangements.
18. Grattan Institute further noted that one associated issue limiting renewable generation development in the last few years is loss factors. Renewable generators get land and regulatory approvals and receive finance for the project, but then constraint arrangements apply to the project and constrain the generator's output more often than anticipated. This kills the investment, particularly if it is highly geared.

Whether Australia is on track for net-zero

19. Grattan Institute noted that the 43% reduction in emissions below 2005 levels by 2030 is dependent on the renewable generation target of 82%. As already discussed, the biggest issue is building out the transmission grid. If Australia built the grid faster, there would not be a concern about building renewable generation assets. While the electricity sector is shifting to renewable energy, Australia is not on track to reach net-zero by 2050.

Impact of the Proposed Acquisition

20. Grattan Institute submits that on balance, it has concerns but not enough to stop the Proposed Acquisition proceeding. There are concerns about the commitments regarding the proposed investment made by Brookfield and whether it is assured. Some of the theories about information sharing and discrimination cannot be proved, because the circumstances that could create a problem have not really emerged in Australia.