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Our ref: MA1000024  
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23 June 2023

Fiona Crosbie  
Chair  
Allens  
[Fiona.Crosbie@allens.com.au](mailto:Fiona.Crosbie@allens.com.au)

Dear Ms. Crosbie

**Re: Brookfield/EIG - Origin merger authorisation application**

The Australian Competition and Consumer Commission (**ACCC**) is currently assessing the confidentiality claims made in relation to the application for merger authorisation lodged 5 June 2023 (**Application**). In particular, the ACCC is considering whether it is satisfied that it is desirable to exclude the documents or parts of documents the subject of the confidentiality claims from the public register by reason of their confidential nature in accordance with section 89(5A) of the *Competition and Consumer Act 2010* (the **Act**).

The merger authorisation process is a public process. Excluding documents or parts of documents from the public register limits the ACCC's ability to test that information. This in turn limits the weight the ACCC can give to that information when considering whether it is satisfied as to the statutory preconditions for authorisation.

The ACCC's assessment of the confidentiality claims is ongoing but, at this stage, the ACCC has particular concerns that exclusion from the public register of certain documents or parts of documents, which are subject to confidentiality claims, would significantly impede its consideration of the Application. This is because those documents fundamentally inform the likelihood and extent of detriments, including any substantial lessening of competition, arising from vertical integration consequent upon the acquisition of Origin Energy Limited. This is a central question for the ACCC in respect of the Application. The ACCC considers that public consultation on this issue is necessary in respect of both the statutory preconditions for authorisation and the Applicants' proposed s 87B undertaking.

In particular, and as mentioned during our phone conversation on Wednesday, 21 June 2023, the ACCC's current concerns are that the public organisational structure charts provided are not sufficiently detailed for market participants to meaningfully engage on the vertical integration effects of the proposed acquisition. We acknowledge that public Annexure 1.10 to the Application provides some detail in this regard however it does not sufficiently identify the interrelationships between relevant parties under the proposed acquisition.

In these circumstances, we request that the Applicants provide a more detailed version of this structure chart, for public consultation, which, at a minimum, includes:

1. The name of each of the 'other Brookfield Managed Funds'.
2. The relationship of Brookfield Asset Management ULC and Brookfield Corporation to BEP and BIP.
3. The General Partner, Investment Managers and common members of the Investment Committees of each of the funds identified in Annexure 1.10. We consider individual identities do not need to be revealed but the extent of common membership should be included.
4. The Investment Managers of Brookfield Renewable Power and Transition and Brookfield Infrastructure.
5. Australian Energy Holdings No 4 Pty Ltd.

We note that the ACCC provided comments on 22 May 2023 in relation to confidentiality claims in the draft application. That it has been necessary to again seek publicly disclosable information going to a matter of central importance to the ACCC's consideration of the Application exacerbates the effect of the already constrained time within which the ACCC is to make its determination.

We request that you provide the public versions of these documents as soon as possible but no later than **Tuesday, 27 June 2023**.

We have also identified other categories of information for which exclusion from the public register has been requested that we consider are important for public consultation on the Proposed Acquisition, in particular, information on:

1. Future generation and storage projects and opportunities
2. Smart meter operations.

We will follow-up with more detail on where these arise in the Application and accompanying documents.

The ACCC notes that, even if information is excluded from the public register, it may disclose that information to such persons and on such terms as it considers reasonable and appropriate for the purposes of making its determination on the Application as per section 89(7) of the Act.

The ACCC may identify further documents or parts of documents that it considers would require testing as part of public consultation.

We propose placing a copy of this letter on the public register. Please advise by **Wednesday, 28 June 2023** if you have any concerns in this regard.

If you wish to discuss any aspect of this letter, please contact Tess Macrae on (03) 9290 1835 or at [Tess.Macrae@acc.gov.au](mailto:Tess.Macrae@acc.gov.au).

Yours sincerely



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Merger Investigations Branch