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29 September 2023

Mr Daniel McCracken-Hewson
General Manager | Merger Investigations Branch
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne VIC 3000

By email

Dear Mr McCracken-Hewson

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

We write to provide a response to the submission of Shell subsidiary, QGC Pty Limited, of 21 September 2023 in relation to the draft section 87B undertaking submitted by MidOcean Energy in connection with the ACCC's consideration of the authorisation application for this transaction.

No particular theory of competitive harm appeared to be advanced in that submission. However, we are nevertheless responding on behalf of MidOcean so the suggestions it makes are not left unanswered.

Before proceeding to respond to that submission, MidOcean notes that no East Coast gas customers, and no other East Coast gas supplier, have suggested they have any concerns with MidOcean's proposed interest in QCLNG and APLNG (even before any undertaking was proposed). That suggests the concerns raised are not shared by any others in the industry.

MidOcean also reiterates that:

- (a) it will not be the operator of either QCLNG or APLNG;
- (b) it will not be the marketer of domestic gas produced by the QCLNG or APLNG projects;
- (c) the 1.25% interest it holds in QCLNG does not entitle it to any influence over the decisions the QCLNG project makes in relation to upstream production (**Confidential to MidOcean**);
- (d) it has no ownership in, or governance involvement in, Walloons which is responsible for marketing of all QCLNG project domestic gas; and
- (e) there is significant regulation and oversight that exists in relation to the East Coast gas market which would detect and prevent the theoretical conduct that Shell/QGC appears to be suggesting, including:
 - (i) the ACCC's East Coast gas market inquiry powers, including mandatory information production powers;
 - (ii) the Heads of Agreement and Australian Domestic Gas Security Mechanism, which would clearly limit any East Coast LNG project strategy of withdrawing supply from the domestic market; and

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- (iii) the Gas Market Code, particularly in relation to the requirements to publish information about available gas for a 24 month future period.

The basis for the suggestion that MidOcean having some visibility over production from both projects gives rise to competition issues is not clear to MidOcean. However, if the theory of harm is that MidOcean's interests would give rise to coordination around production decisions through an output restriction, MidOcean rejects that that would be the likely outcome. As it has no operational or marketing roles, MidOcean is not in a position to coordinate production and supply decision between projects. Its involvement in committees or board discussions would not allow the swift adjustments required to coordinate supply (even if it is, wrongly, assumed that the other participants in QCLNG and APLNG whose approval is required under the governance regimes for each project would facilitate such attempted collusion). Any attempt to do so, and the resulting aligned decrease in supply, would also be anticipated to be visible to the ACCC through the East Coast Gas market inquiry and information to be published under the Gas Market Code. Finally, MidOcean (and the other participants in these projects) have no incentive to withdraw additional supply volumes from the East Coast gas market as that will clearly exacerbate the risks of further government intervention in the East Coast gas market and impose value destructive limitations on the projects' LNG exports.

The other suggestion in the submission seems to be that MidOcean may transfer competitively sensitive APLNG domestic gas marketing information to Walloons. It is not clear how MidOcean would undertake such a transfer given it has no ownership of Walloons or role in Walloons' decision making. The undertaking puts beyond any doubt MidOcean will not obtain Walloons domestic marketing information, so there cannot be any collusion founded on a bilateral exchange between the projects. Without operatorship or marketing roles, MidOcean's information on APLNG is limited to matters coming before the board and committees it is represented on as a shareholder, and MidOcean has no incentive to pursue a one directional supply of such information from APLNG to QCLNG. Given the relative size of its economic exposure, MidOcean has no economic incentives to prejudice its 25.01% interest in APLNG chasing a potential improved outcome on the 1.25% interest in QCLNG. In any case, the provision of competitively sensitive APLNG information cannot lead to any prospect of collusion unless Walloons would willingly receive and use such information (which we assume from Shell/QGC's concerns about separation it would not).

The proposed draft undertaking addresses the only potential competition issues arising from MidOcean's interest in both APLNG and QCLNG without the ACCC having to definitively determine whether (but for the undertaking) MidOcean would receive Walloons marketing or pricing information. No further extension is justified, as no lessening of competition will occur in the East Coast gas market with the proposed undertaking in place.

Please let us know if any additional information on these points would be helpful to the ACCC.

Yours sincerely



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Partner
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