Allens
101 Collins Street
Melbourne VIC 3000 Australia

GPO Box 1776
Melbourne VIC 3001 Australia

T +61 3 9614 1011
F +61 3 9614 4661
www.allens.com.au

ABN 47 702 595 758

1 September 2023

Michael Drake
Director, Merger Investigations Branch
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne VIC 3000

By Email

Dear Mr Drake

Brookfield and MidOcean application for merger authorisation for proposed acquisition of Origin Energy – second transparency letter

We refer to your letter of 29 August 2023 describing the lines of inquiry the ACCC is undertaking (***Second Transparency Letter***).

The Applicants' response is provided in **Annexure A** and **Annexure B** to this letter.

The Applicants request that the information highlighted in Annexure A and Annexure B be excluded from the public register. A schedule of confidentiality claim justifications will follow.

Public versions of both Annexure A and Annexure B are also enclosed for the purposes of publication on the ACCC's register.

Yours sincerely

[redacted]

Ted Hill
Partner
Allens
[redacted]
T [redacted]

Our Ref EJHM **Your Ref** MA1000024
EZFS 806587497v1 121124281 1.9.2023

Public version

Annexure A

Brookfield LP and MidOcean Energy acquisition of Origin Energy Limited

Brookfield's response to the ACCC's transparency letter dated 29 August 2023

This document sets out Brookfield's response to the questions raised in the ACCC's second transparency letter dated 29 August 2023, other than the second question, to which MidOcean Energy has responded separately, as set out at Annexure B.[1]

Executive Summary

The second transparency letter focuses on two issues:

1. The relationship between Brookfield and AusNet; and
2. Brookfield's ability to execute its 'green build-out' plan for Origin Energy Markets and bring renewable generation online more quickly than other potential developers.

Issue one: Relationship between Brookfield and AusNet

It is common ground between Brookfield and the ACCC that Brookfield Infrastructure actively manages its interest in AusNet. It is also common ground that there is not currently formal ring-fencing in place between Brookfield Infrastructure and Brookfield Renewable. This is because today, there is no legal or other reason why there should be. The ACCC suggests that as a result, Brookfield Infrastructure may cause AusNet to discriminate against Origin Energy Markets' competitors, in particular in relation to connections and confidential information.

In fact, such discrimination is not possible because of the regulatory regime applying to AusNet and the role of AEMO in Victoria, including its role in relation to connections. The second transparency letter does not seek to explain how discrimination could be possible given these features.

Notwithstanding the fact that discrimination is not possible, Brookfield has proposed a revised undertaking which addresses each of the concerns expressed by the ACCC in the second transparency letter in relation to this issue. The revised undertaking also adopts the two recommendations for remedies proposed in an expert report from Mr Paul Hyslop obtained by the ACCC. The revised undertaking includes strict ring-fencing and a prohibition on discrimination in relation to connections.

Issue two: Brookfield's ability to execute its 'green build-out' plan for Origin Energy Markets and bring renewable generation online more quickly than other potential developers

The ACCC has raised questions about whether Brookfield is in a position to develop renewables faster than the rest of the industry. It has asked Brookfield to demonstrate how it would achieve its proposed development by 2033.

Brookfield has provided the ACCC with an explanation of how it intends to achieve its 'green build-out' plan and the proposed number of projects by technology and location, noting that it is based on the market as it exists today. The plan will evolve over the next 10 years in response to market circumstances and opportunities. The most important point is that BGTF plans to develop up to 14 GW by 2033 and has the capital and expertise necessary to deliver on that plan. The reason for doing so is to provide Origin's electricity customers with clean energy, which has the effect of replacing the generation from Origin's existing coal fired power station, Eraring, and substituting Origin's current market purchases, thus having

[1] Unless otherwise stated, capitalised terms used in this response have the same meaning as in the Application.

the effect of assisting with the decarbonisation of Australia's energy system once complete. This must be compared to the counterfactual where Brookfield estimates that Origin would develop up to 4GW of new renewable generation and storage by 2033 (either itself or by entering into PPAs). It is not the case that 'the rest of the industry' will invest to develop what the BGTF Consortium plans to develop.

Brookfield will be better placed to develop renewable projects at pace under the Proposed Acquisition relative to the counterfactual and other potential developers. A key reason for this is the ownership of a substantial retail customer base, which facilitates and de-risks projects relative to other models for development. Together with Brookfield's access to capital, funding strategy, expertise and global procurement capabilities, the Proposed Acquisition makes a significant contribution to Australia's net zero goals compared to the counterfactual. This has been acknowledged by both Origin and other industry participants. Again, there is no basis to assume that, in the absence of the Proposed Acquisition, another investor will step in to develop renewables at the same scale and speed as the BGTF Consortium's 'green build-out' plan.

Brookfield's relationship with AusNet

1 The ACCC requests such additional information including evidence that the Applicants consider is relevant to the ACCC's findings regarding Brookfield's management of AusNet including information flows within Brookfield.

A Introduction

1 As indicated to the ACCC previously, including at a meeting with the Commissioners on 4 August, Brookfield Infrastructure actively manages its interest in AusNet. Furthermore, Brookfield acknowledges that there is there is currently no formal ring-fencing in place between Brookfield Infrastructure and Brookfield Renewable Power and Transition (***Brookfield Renewable***). There is no legal or other reason today why formal ring-fencing would be required.

2 The ACCC has expressed a concern that this creates a risk that AusNet could operate its transmission network, or use confidential information in relation to the connections process, in a way that is favourable to Origin, or frustrating to Origin's rivals. AusNet's Victorian transmission network is, however, very heavily regulated so as to remove any ability for AusNet to exercise market power, including by discriminating in the manner contemplated. This position is reinforced by the fact that AEMO, rather than AusNet, is responsible for many key transmission functions in Victoria, including playing a central role in relation to connections. The Applicants have set out in detail in the Application and subsequent submissions to the ACCC why any type of discrimination would not be possible, including most recently in the Applicants' response to the Hyslop and Harris Reports dated 23 August (the ***23 August Response***) and in the further expert report of Greg Houston dated 25 August (the ***August Houston Report***). The second transparency letter does not provide any explanation of why the regulatory regime and role of AEMO do not remove any potential for discrimination that might substantially lessen competition.

3 Notwithstanding the Applicants' view that there is no possibility of meaningful discrimination, on 27 August 2023, Brookfield offered a revised proposed undertaking to the ACCC (the ***Revised Undertaking***). The Revised Undertaking will impose strict ring-fencing and seeks to address each of the concerns expressed by the ACCC in the first section of the second transparency letter. The Revised Undertaking also substantially adopts the two recommendations made by Mr Hyslop in his report dated 10 August 2023 (the ***Hyslop Report***). The Revised Undertaking is described in more detail at paragraph 34 below.

B Brookfield's active management of AusNet

4 Brookfield's core business globally is to be an active and operations-oriented fund manager. This means that its approach to managing assets is to be actively involved with the management teams of its businesses. This is a core element of the products Brookfield offers its investors.

5 Brookfield has acknowledged that Brookfield Infrastructure controls AusNet. As described in the Application, Brookfield has the right to appoint four of eight directors to the board of AusNet Holdings and Brookfield **Confidential to Brookfield: voting rights**.[2]

6 Paragraphs [500]-[505] of the Application describe the legal governance arrangements of AusNet and how those arrangements are intended to apply. In practice, since acquiring AusNet, Brookfield Infrastructure has been more involved in the management of AusNet including on connection matters falling within the AusNet CEO's delegated authority. This is partly because AusNet is a relatively recent investment for Brookfield Infrastructure and the economics of new connections are an important component of the AusNet business case. We acknowledge that some wording in the Application, including the use of the phrase 'day to day activities', has created confusion. We have since made clear to the ACCC that Brookfield Infrastructure has been, and is, actively involved in managing its investment in AusNet.

7 In its meeting with the Commissioners on 4 August, Brookfield Regional Head of Asia Pacific, Mr Stewart Upson explained that Brookfield Infrastructure does have influence over AusNet and that Brookfield is an active fund manager aiming to drive value in the investment for both Brookfield and its co-investors.

8 The evidence identified by the ACCC is evidence only of Brookfield Infrastructure being an active fund manager aiming to drive value in the investment in AusNet for both Brookfield and its co-investors. In particular:

(a) Paragraph 7 of the second transparency letter states that '*staff in Brookfield's Infrastructure business unit… receive the detail of many (and possibly all) proposed connections to AusNet's transmission networks, including for contracts or projects with expenditure within the thresholds set out in the Application*.' Brookfield Infrastructure's involvement in connections applications reflects the fact that contestable connections are a significant part of the AusNet's business and often involve significant capital expenditure (in some cases commercially significant spends for AusNet). As explained by **Confidential to Brookfield**'[3] AusNet management frequently discuss connections opportunities with staff within Brookfield Infrastructure including the estimated capital expenditure involved and the credit worthiness of the project seeking to be connected. It is important to note that these connections involve AusNet entering into long term contracts (in many cases up to 20 years) so they are significant aspects of the AusNet business. Further, many connections applications will ultimately require the approval of the AusNet Holdings company board and, therefore, Brookfield Infrastructure to vote on the relevant documentation being signed for those projects. It has been the practice that AusNet management will involve Brookfield Infrastructure in the consideration of connections applications early so that there are no surprises if and when approval is sought from the AusNet Holdings company board. As a significant owner of the business, with deep operating expertise globally, Brookfield wishes to provide guidance to management on matters involving material capital expenditure. Brookfield Infrastructure staff are likely to be involved to a similar degree when AusNet prepares its regulated

[2] Application, para 505.
[3] Examination of **Confidential to Brookfield**, transcript pp 34-35.

capital expenditure plans for its electricity and gas distribution businesses for the purposes of the 5-yearly regulatory price resets.

(b) The ACCC points out that 'Brookfield seconded a Vice President in its Infrastructure business unit to AusNet's Commercial Investment team'. The individual seconded to AusNet was an individual from within the Brookfield Infrastructure business unit. That secondment has now ceased, and the individual has returned to their former role in Brookfield Infrastructure. The purpose of this secondment, **Confidential to Brookfield**,[4] was to assist AusNet in the transition from a listed company to a private business and to educate the AusNet team about Brookfield's approach to underwriting new investments. This secondment of a Brookfield Infrastructure employee to a Brookfield Infrastructure portfolio company is entirely appropriate in these circumstances. It is also consistent with how Brookfield's other business units conduct business (eg, the private equity business unit or property business unit). It is important for the professional development of young professionals to be seconded into operating businesses so they can get experience working in those types of environments.

C The extent of information flows within Brookfield

9 Brookfield acknowledges that there is no formal ringfencing in place between Brookfield Infrastructure and Brookfield Renewable today. There is no legal or other reason today requiring formal ringfencing. In late 2022, in anticipation of a transaction that raises competitive sensitivities such as Origin, Brookfield made the decision to locate Brookfield Renewable and Brookfield Infrastructure personnel on different floors, in order to facilitate some form of formal ring-fencing that may be required in the future.

10 Similarly, there has previously been no prohibition on the movement of personnel between business units – there has been no reason for such a prohibition to exist. The Brookfield Renewable business unit was only formally established in Australia in 2022. Mr Luke Edwards, a Senior Vice President (and formerly Vice President) within the Brookfield Infrastructure business unit, was asked to head up the Renewable business unit in Australia shortly following its establishment. Mr Edwards gradually transitioned from his role within Infrastructure to Renewable as the Renewable business unit commenced operations in Australia. The transition in roles took some time and during this period Mr Edwards could be said to have worked for both groups. This was entirely appropriate as there was no reason at the time why the businesses needed to be ring-fenced.

11 Prior to his move to Brookfield Renewable, Mr Edwards was a member of the Brookfield Infrastructure team managing Brookfield Infrastructure's interest in AusNet. Once Mr Edwards fully transitioned to Brookfield Renewable, he was no longer involved in the management of AusNet. Going forward, if the ACCC accepts the Revised Undertaking, there will be an unqualified prohibition on a person moving from a role that involved management of AusNet to a role that involves management of Origin Energy Markets (and vice versa).

12 The second transparency letter notes that Mr Edwards is responsible for deploying fund allocations for operating renewables in Australia. This includes for investments that might be made through funds including BSIP, BIF IV[5] and BIF V. We believe there might be some level of confusion as to how Brookfield's fund structure works. As noted in the Application, capital investment in BIF IV and BIF V can be deployed by both Brookfield Renewable and Brookfield

[4] Examination of **Confidential to Brookfield**, transcript pp 69-70.
[5] Limited to follow-on capex in existing renewable investments, as the fund is fully invested.

Infrastructure[6] and this is by design. Brookfield Renewable deploys the capital of BIF IV and V for renewable investments only. It is important to remember that funds are simply a mechanism to connect investment capital with where capital deployment is required (ie, investments). The funds are not legal entities and do not operate as though they were legal entities in their own right. For example, a BIF series fund such as BIF IV does not have a board that meets to consider or make decisions in respect of all fund investments. Fund investments are managed separately by the relevant business unit – in the case of BIF IV, renewable investments are managed by Brookfield Renewable and non-renewable investments are managed by Brookfield Infrastructure.

13 Paragraph 11 of the second transparency letter states that the ACCC's investigation '*has found evidence of collaboration between AusNet (including Mondo) and Brookfield outside the Brookfield Infrastructure business unit.'* The collaboration refers to connections and network advice services that AusNet has provided to Brookfield Renewable pursuant to an arm's length service agreement.[7] AusNet's contestable arm, Mondo, provides consulting services to companies seeking advice in relation to connections across the NEM (i.e., not just in Victoria). There are also a number of companies providing these types of services, Mondo is not the only provider. Brookfield Renewable acquired consulting services from AusNet's contestable arm in relation to Brookfield Renewable's current business seeking opportunities to develop renewable generation and storage unrelated to the Proposed Acquisition. The services related to two possible renewables projects, one in New South Wales and one in Queensland. The total amount payable to AusNet was $30,000. As the ACCC notes, these services were acquired on arm's length terms between a supplier and customer between the Infrastructure and Renewable businesses. If the Proposed Acquisition proceeds, Origin may acquire such services from AusNet (or another supplier of such services). The proposed Revised Undertaking would however prevent communications between AusNet and relevant Brookfield Renewable staff meaning that this type of arrangement could not exist in future between Brookfield Renewable and AusNet to ensure that an inadvertent channel for communication was not created.

14 Paragraph 12 of the second transparency letter states that '*The ACCC's investigation has also found evidence that sensitive cost information about Intellihub's retail electricity customers has been sent to other parts of Brookfield, including to a Senior Vice President in the Investments business unit for their assessment*'.

15 There are a number of factual inaccuracies with this statement:

(a) Intellihub does not have 'retail electricity customers'. Its customers are large retailers like AGL, EnergyAustralia and Origin. No information about retail consumers of electricity was shared.

(b) The information Brookfield Infrastructure shared comprised examples of Intellihub's contracts with major electricity retailers and the Investment Committee presentations for Brookfield Infrastructure's acquisition of the 50% interest in Intellihub.

(c) The information was not shared with Brookfield's Investments business unit, there is no such unit. The documents referred to by the ACCC as support for this statement,[8] were provided to a 'Senior Vice President – Investments' in Brookfield's Insurance Solutions business unit.

16 The purpose of sharing the information was for the relevant person to assess whether a particular financing structure might be available and beneficial for Intellihub. Again, this is entirely consistent

[6] Application, para 471, Figure 22.
[7] **Confidential to Brookfield**
[8] **Confidential to Brookfield**

with Brookfield Infrastructure acting as an active fund manager. Brookfield assumes there is no suggestion of impropriety on its part.

D ACCC's concerns

Brookfield's ability and incentive to control AusNet

17 The second transparency letter states that '*evidence indicates that Brookfield Infrastructure is involved in the day-to-day business activities of AusNet and actively manages AusNet through endorsement of all contestable work. The ACCC is concerned that this creates the risk that AusNet could operate its transmission network in a way that is favourable to Origin, or frustrating to Origin's rivals*.'

18 The second transparency letter does not explain how AusNet could operate its transmission network in a way that is favourable to Origin or frustrating to Origin's rivals.

19 It appears that contestable connections are the main area of ACCC concern given the reference to 'contestable work'. Contestable connections involve new generation or storage assets connecting to the existing network. By definition, the provision of contestable connections is subject to competition. A new generator may conduct a competitive tender or negotiate with potential providers and select a preferred provider based on their price and quality offering. In relation to price, if AusNet attempted to discriminate against an Origin rival by offering them a higher price for a contestable connection, then AusNet is likely to lose that opportunity to a rival provider of connection services (eg, Lumea or Beon). AusNet today would presumably offer connections at a price that would be competitive with the market. There is no reason to think that AusNet could charge a higher price to Origin's generation rivals after the Proposed Acquisition than it would charge today. In relation to timing, any attempt by AusNet to discriminate against an Origin rival by offering them a longer construction period is again likely to result in AusNet losing that opportunity to a rival provider of connection services (eg, Lumea or Beon). The fact that contestable connections are provided in a competitive market removes any potential for AusNet to discriminate against other generators in favour of Origin.

20 In relation to non-contestable connections and other aspects of operating the transmission network, the regulatory regime and role of AEMO in Victoria will prevent any discrimination. AusNet's Victorian transmission network is very heavily regulated so as to remove any ability for AusNet to exercise any market power it may have, including by discriminating in the manner contemplated. This position is reinforced by the fact that AEMO, rather than AusNet, is responsible for many of the key transmission functions in Victoria, including playing a central role in relation to connections. The Applicants have set out in detail in the Application and subsequent submissions to the ACCC why any type of discrimination by AusNet would not be possible, including most recently in the Applicants' response to the Hyslop Report and in the August Houston Report. The second transparency letter does not seek to explain why the ACCC might still have concerns about discrimination despite the regulatory regime and role of AEMO. We acknowledge, however, that the ACCC may not have had time to fully consider the Applicants' 23 August Response and the August Houston report before it prepared the second transparency letter and we consider those documents will be responsive to the ACCC's concerns.

21 In considering the potential for discrimination, it should be borne in mind that the green-build out as planned is expected to result in Origin seeking connection to AusNet's network up to **Confidential to Brookfield** times in the next 10 years (out of **Confidential to Brookfield** projects in total in the NEM). One of the **Confidential to Brookfield** projects is the Mortlake BESS (existing connection). The fact that Origin is likely to be seeking only **Confidential to**

Brookfield connections (or possibly Confidential to Brookfield if a new connection agreement is required for the Mortlake BESS) further reduces the likelihood of any possible discrimination.

22 Notwithstanding the Applicants' view that there is no possibility of meaningful discrimination by AusNet, the Applicants have offered the Revised Undertaking to the ACCC, which seeks to address each of the concerns expressed by the ACCC. The Revised Undertaking also substantially adopts the two recommendations made in the Hyslop Report. The Revised Undertaking is described further in paragraph 34 below.

The depth and breadth of potentially competitively sensitive AusNet information being shared with Brookfield staff

23 The second transparency letter states that '*The evidence indicates that detailed information about third party connections to AusNet's transmission network is being shared with Brookfield staff. The ACCC is concerned that the level of information being shared with Brookfield, together with Brookfield's involvement in AusNet's day-to-day business activities and decisions, creates the risk that competitively sensitive information can be used to delay or frustrate connection processes for Origin's generator / retail rivals, or favour Origin's generators / retail business*.'

24 As discussed above, Brookfield acknowledges that Brookfield Infrastructure receives information about AusNet, including financial information about connection related capital investment. It is necessary for Brookfield Infrastructure to receive such information for the purposes of effectively managing its interest in AusNet. However, as discussed in paragraph 34, no such information would be shared with Brookfield Renewable if the Revised Undertaking is accepted by the ACCC and the Proposed Acquisition proceeds.

25 Again, the second transparency letter does not explain how AusNet could use competitively sensitive information to delay or frustrate connection processes for Origin's generator/retail rivals or favour Origin's generators/retail business.

26 In relation to Origin's ***retail*** rivals, there is no possibility of discrimination in relation to transmission connections given that retailers do not connect to the transmission network. The Hyslop Report concludes at paragraph 45 that '*A gentailer integrated with transmission would have little capacity or incentive to engage in discrimination or other conduct that is adverse to competitors in retail markets.*'

27 In relation to ***generation*** markets, if the ACCC is suggesting that AusNet might provide confidential information about an Origin generator rival's application for connection to Origin Energy Markets, this is specifically prohibited under the National Electricity Rules. To the extent that the ACCC is concerned that AusNet could discriminate because of its role in the connection process, this is not possible because of the regulatory regime and role of AEMO. The Applicants have set out in detail why this would not be possible in the Application and subsequent submissions,[9] including most recently in the Applicants' response to the Hyslop Report and in the August Houston Report. Again, the second transparency letter does not seek to explain why the ACCC may still have concerns in this regard.

28 The Revised Undertaking offered by the Applicants seeks to address each of the concerns expressed by the ACCC in this area, notwithstanding the Applicants' view that there is no possibility of meaningful discrimination in relation to connections. This includes an express prohibition on discrimination in relation to connections (section 7 of the Revised Undertaking). The Revised Undertaking is discussed further at paragraph 34 below.

[9] See in particular, Application, sections 9 and 11 and Applicants' response to question 4 in the first transparency letter dated 19 July 2023.

The lack of effectiveness of any ring-fencing within Brookfield

29 The second transparency letters states that '*The evidence indicates that while ring-fencing strategies may be set up to reduce the flow of information between Brookfield funds and business units, the effectiveness of these strategies may be limited. There is some movement of personnel between the business units, including the current Head of Brookfield Renewables (previously in Brookfield Infrastructure) and the secondment of a Brookfield staff member to AusNet. The evidence also indicates there are regular meetings, both formal and informal, between Brookfield Renewables, Brookfield Infrastructure and AusNet staff. The ACCC is concerned that ring-fencing strategies including separate floors for business units are not sufficient to mitigate the risks that arise from interchanging and regular meetings of staff*.'

30 There is currently no formal ring-fencing in place between Brookfield Infrastructure and Brookfield Renewable because there is no legal or other reason today why formal ring-fencing would be required.

31 Our interpretation of these comments is that because there is evidence of this happening in a small number of circumstances in the last 12 months that there is the theoretical possibility that it could happen again in the future. This is not possible because there would be formal ring-fencing between the Infrastructure business unit and Renewables business unit.

32 The Revised Undertaking will introduce formal ring-fencing between Brookfield Infrastructure and Brookfield Renewable in Australia. The Revised Undertaking is described in more detail below, but key points to note include:

(a) a defined list of Brookfield Infrastructure staff will be responsible for managing the Brookfield Infrastructure interests in AusNet (***BI AusNet Supervisory Personnel***) and a defined list of Brookfield Renewable staff will be responsible for managing the Brookfield Renewable interests in Origin (***BR Origin Supervisory Personnel***). There will be no overlap between those two lists. It will no longer be possible for a person to move from a BI AusNet Supervisory Personnel role to a BR Origin Supervisory Personnel role, or vice versa;

(b) although it would be possible for a BI AusNet Supervisory Personnel to be seconded to Ausnet, it would not be possible for a BR Origin Supervisory Personnel to be seconded to AusNet; and

(c) there will be an express prohibition on exchange of any relevant AusNet and Origin information between BI AusNet Supervisory Personnel role and BR Origin Supervisory Personnel, including a prohibition on discussing such information at any meetings between them.

33 Brookfield is aware of the ACCC's concerns. This is why it has addressed these concerns in the Revised Undertaking.

Revised Undertaking

34 A high-level overview of the Revised Undertaking offered by Brookfield is set out below, including a discussion of how the Revised Undertaking seeks to address each of the concerns articulated by the ACCC in the first part of the second transparency letter.

(a) **Separation of Brookfield Infrastructure and Brookfield Renewables**

Clause 5 of the Revised Undertaking requires the separation of Brookfield Infrastructure's management of its interest in AusNet on the one hand and Brookfield Renewables' management of its interest in Origin Energy Markets on the other. The clause does so by providing for:

(i) ***separation of management***: Brookfield Infrastructure's interest in AusNet will be managed by a defined list of BI AusNet Supervisory Personnel. Brookfield Renewables' interest in Origin Energy Markets will be managed by a defined list of BR Origin Supervisory Personnel. Whereas previously movement between the two business units was possible, subject to compliance with appropriate conflicts policies and process, there will now be an unqualified prohibition in the Revised Undertaking on a person moving from a BI AusNet Supervisory Personnel role to a BR Origin Supervisory Personnel role, and vice versa.

(ii) ***separation of information***: There will be information barriers to ensure BI AusNet Supervisory Personnel cannot access and are not sent relevant Origin information and BR Origin Supervisory Personnel cannot access and are not sent relevant AusNet information. There will also be a prohibition on BI AusNet Supervisory Personnel and BR Origin Supervisory Personnel discussing with each other relevant AusNet or Origin information or the management of either AusNet or Origin.

(iii) ***physical separation***: there will be separate designated work areas for Brookfield Infrastructure and Brookfield Renewables, which require security passes to enter, and which must be on separate floors of a building.

(iv) ***restrictions on cross incentives:*** BI AusNet Supervisory Personnel's remuneration will not be linked to the performance of Origin Energy Markets and BR Origin Supervisory Personnel's remuneration will not be linked to the performance of AusNet (except to the extent such personnel may receive options or other incentives linked to the overall performance of Brookfield Corporation or Brookfield Asset Management ie, linked to the performance of all assets owned by or under the management of Brookfield globally. Currently Origin and AusNet combined would represent only approximately 2% of the assets Brookfield manages worldwide

In combination, these measures mean that Brookfield Infrastructure personnel participating in the management of AusNet will have no incentive to cause AusNet to discriminate against Origin's rivals. It also means that Brookfield Renewable personnel participating in the management of Origin will not have any involvement in the management of AusNet or receive any relevant AusNet information.

(b) **Separation of AusNet and Origin Energy Markets**

Clause 6 of the Undertaking requires the continued separation of AusNet and Origin Energy Markets. The clause does so by providing for:

(i) ***separation of directors***: no person can be appointed by Brookfield Infrastructure to be a director or secretary of a relevant AusNet company who is, or who has previously been, a director, secretary or senior manager of a relevant Origin Energy Markets company or who is, or who has previously been, BR Origin Supervisory Personnel. Similarly, no person can be appointed to be a director or secretary of a relevant Origin company who is, or who has previously been, a director, secretary or senior manager of a relevant AusNet company or who is, or who has been, BI AusNet Supervisory Personnel.

(ii) ***separation of senior management***: there will be no overlap between the senior management of AusNet and Origin Energy Markets.

(iii) ***separation of information***: AusNet and Origin Energy Markets will have separate information technology systems.

(iv) ***physical separation***: AusNet and Origin Energy Markets will have separate premises.

(v) ***restrictions on cross incentives***: the remuneration of AusNet senior management will not be linked to the performance of Origin Energy Markets and the remuneration of Origin Energy Markets senior management will not be linked to the performance of AusNet. This undertaking, and the earlier undertaking, on Brookfield incentives, substantially implements the first recommendation made in the Hyslop Report in response to a request from the ACCC to identify practical steps that could be undertaken to mitigate risks.

The Revised Undertaking will ensure the continued separate management of AusNet and Origin Energy Markets. It will also ensure that there is no incentive for senior management of AusNet to discriminate in favour of Origin Energy Markets***.***

(c) **Connections to the AusNet Transmission Network**

The purpose of clause 7 of the Undertaking is to ensure that AusNet does not discriminate in favour of Origin Energy Markets, or discriminate against competitors of Origin Energy Markets, in relation to connections to the AusNet Transmission Network.

(i) ***Obligation not to discriminate***: Brookfield undertakes to take all steps available to it to ensure that AusNet does not discriminate between Origin Energy Markets and a competitor of Origin Energy Markets in connection with the provision of *negotiated transmission services* including *connection services* (as defined in the NER). The drafting of this clause is based on the drafting of the prohibition on discrimination in the Transmission Ring-fencing Guidelines that currently applies to *prescribed transmission services* but not to *negotiated transmission services*.

(i) ***Origin Energy Market applications to connect***: Brookfield Infrastructure personnel will not be involved in applications made by Origin Energy Markets to connect to the AusNet transmission network.

(ii) ***Origin Energy Markets connections publication:*** Origin Energy Markets will publish certain information when it applies to connect to the AusNet Transmission Network including location, date and pricing information so as to provide transparency. This undertaking implements the second recommendation made in the Hyslop Report in response to a request from the ACCC to identify practical steps that could be undertaken to mitigate risks.

These measures are intended to ensure that AusNet does not discriminate in favour of Origin Energy Markets or against its competitors in relation to connections to the AusNet transmission network. It also places an obligation for Origin Energy Markets to publish information about its connection application so as to provide transparency and enhance the ability to detect any discrimination. The ability to detect discrimination is also reinforced by the requirement of an annual audit of compliance discussed below. Furthermore, relevant Brookfield Infrastructure personnel will not be involved in any Origin Energy Market applications to connect.

(d) **Reporting on the 'green build-out'**

Clause 8 of the Undertaking will require Brookfield to report annually on the progress of Origin Energy Markets in achieving the goal to:

(i) construct, or procure the construction, of 14 GW of renewable generation and storage by the end of 2033; and

(ii) ensure Origin Energy Markets is on a 1.5 degree Paris aligned emissions pathway by the end of 2033.

This will provide transparency on how a Brookfield Renewable owned Origin Energy Markets is tracking in delivering some of the key public benefits described in the Application.

(e) **Other**

The Revised Undertaking also contains provisions:

(i) requiring that when Brookfield Renewable sells all of its economic interests in Origin Energy Markets it does so in a way that does not result in AusNet and Origin Energy Markets being controlled by a single corporate group (clause 9);

(ii) requiring Brookfield to take all steps available to it within its powers to ensure that Intellihub does not provide confidential information of an electricity retailer or other customer of Intellihub to Origin Energy Markets or BR Origin Supervisory Personnel (clause 10);

(iii) requiring Brookfield to appoint a compliance officer to ensure compliance with the undertaking, including report breaches to the ACCC, and to implement compliance training (clause 11); and

(iv) providing for an annual independent audit of Brookfield's compliance with the undertaking. A public version of the audit report will be published each year (clause 12).

35 In summary, the Revised Undertaking is intended to address all of the concerns raised by the ACCC in the first part of the second transparency letter and includes the two recommended remedies suggested in the Hyslop Report.

Net public benefit

3 The ACCC requests such additional information relevant to the ACCC's determination, including additional evidence that Brookfield, under the Proposed Acquisition, would have an advantage in developing renewable generation and storage projects compared with the broader Australian industry or similar global investment companies. Without limiting the Applicants' response, the ACCC also requests verifiable evidence that the combination of the following factors are particular to Brookfield and will mean Brookfield (through its ownership of Origin) will bring renewable generation online more quickly than other potential developers:

(a) Brookfield's access to capital, capital structure, longer term horizon for investment, renewables expertise and globalised procurement capabilities,

(b) Origin's retail load as a built-in offtaker, and

(c) Brookfield's hurdle rate (including the degree to which, and how, the above factors would influence its hurdle rate).

36 The identity of an individual investor can make a fundamental difference to the nature of investment. A BGTF Consortium owned Origin Energy Markets, following the Proposed Acquisition, is better placed to develop renewable generation and storage projects relative to **both** Origin in the future without the Proposed Acquisition **and** the broader Australian industry or similar global investment companies.

37 In any event, as noted at paragraph 91 to 96 of the 23 August Response, there are a number of features of a BGTF Consortium owned Origin Energy Markets that will have a fundamental bearing on the speed of investments in renewables and storage.

38 **First, it is the combination of Origin and the BGTF Consortium which de-risks the 'green build-out'**. This combination derives from Origin, which is structurally short of electricity (ie, it generates significantly less electricity than it sells) even before the planned closure of Eraring. It is Origin's short position and existing platform of retail and generation assets, ***combined with*** Brookfield's global capital and supply chain relationships in a de-listed setting which will accelerate and increase the scale of investment in renewable and storage assets, relative to what may be the case absent the Proposed Acquisition.

39 **Second, the intention of the investor / developer, ie, the BGTF Consortium, will also materially affect the outcome of a company's renewables build-out**. Origin's Climate Transition Action Plan sets a target for Origin Energy Markets to have 4 GW of renewable generation and storage capacity by 2030 (including both owned and contracted generation and storage). In contrast, the BGTF Consortium intends to deploy a 'green build-out' plan for the Origin Energy Markets business, developing up to 14 GW of large-scale renewable generation and storage assets by 2033. Obviously, the significant difference between the plans of Origin as a standalone listed company compared with the BGTF Consortium's plans once it owns Origin illustrates that the Proposed Acquisition will make a considerable difference to the outcome.

40 **Third, access to capital**: access to capital is a key challenge for rapid renewables build-out at the scale required by both Origin and Australia. As discussed in detail in paragraphs 27 to 29 of the 23 August Response, it is very difficult for listed companies to make the necessary investment in renewables development to achieve Australia's targets. This is significant because of the key position that listed companies have in the electricity sector, notably AGL and Origin. The challenges Origin faces as a listed company have been outlined by the Applicants in the

Application as well as Mr Anthony Lucas's statement. To summarise the challenges outlined previously, access to capital, especially for a listed company, is subject to a number of constraints, particularly in the context of renewable development.[10] These challenges place limitations on Origin's ability to invest excess cashflow, utilise its existing balance sheet, or raise fresh equity to invest in new renewable projects at speed and at scale.[11]

41 By contrast, the BGTF Consortium focuses on total return over a longer timeframe. This gives BGTF more flexibility when it comes to committing to new projects. BGTF is a closed-end fund which means that investors in BGTF have committed capital to the fund for a period of at least 12 years (with the option for two one-year extensions) without any expectation of regular distributions during the life of the fund. There is therefore a period of approximately 12 years before the fund needs to realise returns on its assets. This makes investing in capital-intensive projects which run for a number of years before generating a return more feasible for BGTF. BGTF therefore provides greater certainty of the funding of up to 14 GW of new renewable projects for the Origin green built-out plan.

42 Furthermore, many institutional investors are reluctant to assume construction risk, ie, they are prepared to acquire or invest in a renewable asset once it is built and has a portion of its electricity contracted, but are reluctant or unable to fund the construction of new renewables either 'on-specification' or with the view to contract the output with corporate counterparties or gentailers such as Origin. Of the investors prepared to take construction risk, many are unable to or unwilling to invest in companies with an exposure to thermal coal or fossil fuel power generation and so could not invest in Origin with a view to transitioning it in the way the BGTF Consortium intends to.

43 By contrast, the BGTF Consortium has capital available specifically dedicated to investing in the transition of high emission companies like Origin. Furthermore, because of its expertise and global experience, the BGTF Consortium is prepared to accept construction risk. There is a very limited pool of capital that is willing to invest in high emissions companies and accept construction risk. Bringing $20 to $30 billion of that capital to Australia will be incremental. There are no equivalent plans, for example, to transform AGL and EnergyAustralia in the way that the BGTF Consortium is planning with Origin. This makes BGTF a unique source of capital.

44 **Fourth, certainty of offtake**: Developing a new renewable generation or storage project without a guaranteed offtaker presents a high degree of risk. There has been only one material project in the last several years that has taken merchant risk in developing renewables, ie, without a PPA. Iberdrola, in its submission to the ACCC, recognised the risk of entering into projects on a fully merchant basis: '*in any particular year, a generator that had gone merchant could have gone bankrupt or made a significant profit*'. Owning a large platform, such as Origin Energy Markets with ~2.73 million electricity customer accounts and a demand profile of ~36 TWh (FY22) that provides a ready-made offtaker, substantially eliminates this aspect of the development risk, increasing the certainty and speed of the development ultimately proceeding. This is principally because having a retail base provides a developer with a committed third party offtaker, significantly simplifying the commercial requirements for each project and accelerating the timeline to reach financial close. This also allows the developer to avoid the costs of negotiating a PPA with a third party, which can be complex, costly and time consuming.[12]

[10] Response to Transparency Letter, paragraphs 8.30 – 8.31; Upson statement, paragraphs 26 to 29; Edwards statement, paragraphs 40 to 47.
[11] Application, paras 414 – 416 and 814 and 815.
[12] Application, section 6.10(b) (in particular paragraphs 831 – 833); First Response to Third Party Submissions, paragraph 5.17.

45 The benefits of owning a retail customer base are widely acknowledged within the industry. For example, in its submission to the ACCC dated 1 August 2023,[13] Iberdrola noted *'there is an advantage to having a retail base and gentailers can effectively manage a smaller discount rate*'.[14] It also noted that *'Brookfield would be helpful in respect to expediting the transition and development of new projects, although the effect would be hard to quantify. Brookfield,* ***with a credible offtaker in the form of Origin's retail customer base*** *and project financing skills, could help the bankability and certainty of projects, alongside supporting confidence in new greenfield projects*' (emphasis added).[15]

46 A number of other interested party submissions noted the challenges of the PPA market, for example, ACEN[16] and Clean Energy Council.[17] Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin noted the challenges of PPAs for Origin specifically and therefore the preference for direct investment, as follows:

> *From a corporate perspective, there is a limit to how many PPAs Origin can enter (a so-called 'capital-light' approach), because, as more PPAs are used, the ongoing operating cash costs to the business increase (compared to what would be the case for owned renewable projects), leading to increased operating leverage, and at some point this would affect the balance sheet structure and credit rating of the business.*[18]
>
> *… for new projects, direct investment is preferable, as there is a limit to the scale of projects that can be underwritten with PPAs; and direct investment (as compared with underwriting projects using PPAs or otherwise obtaining third party financing) also decreases the complexity of projects and reduces uncertainty. Any reduction in uncertainty is helpful, as there are many points at which a project may fail prior to the commencement of construction. Direct investment allows a more agile approach to undertaking the initial stages of a potential project (as explained at paragraph 40 above) and this may mean, for example, that more potential projects could be investigated and progressed at early stages such that the impact of the failure of one project (for reasons of regulatory approval or otherwise) is reduced. Additionally, direct investment in and of itself may be a factor that makes the approvals process easier...*[19]

47 **Fifth, access to global procurement and renewables expertise**: There is high demand globally for the inputs necessary to construct renewable generation and storage. It is difficult for companies without a global presence, located in Australia to secure these inputs in a timely and cost effective way. Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin acknowledges that Brookfield is better placed in this respect in relation to battery storage projects (see paragraph 80 of Anthony Lucas' statement), as well as more generally, noting *'Brookfield's global demand and scale is likely to mean that it can access supply chain arrangements and pricing that Origin is unable to match'* (see paragraph 81 of Anthony Lucas' statement).

[13] Record of Iberdrola's oral submission to the ACCC, 1 August 2023, <https://www.accc.gov.au/system/files/public-registers/documents/Iberdrola%20record%20of%20oral%20submission%20-%20PR%20VERSION%20-%2001.08.23%20-%20MA1000024%20Brookfield%20Origin.pdf>.
[14] Record of Iberdrola's oral submission to the ACCC, 1 August 2023, para 12, <https://www.accc.gov.au/system/files/public-registers/documents/Iberdrola%20record%20of%20oral%20submission%20-%20PR%20VERSION%20-%2001.08.23%20-%20MA1000024%20Brookfield%20Origin.pdf>.
[15] Record of Iberdrola's oral submission to the ACCC, 1 August 2023, para 24, <https://www.accc.gov.au/system/files/public-registers/documents/Iberdrola%20record%20of%20oral%20submission%20-%20PR%20VERSION%20-%2001.08.23%20-%20MA1000024%20Brookfield%20Origin.pdf>.
[16] Record of oral submission of ACEN Australia, 4 July 2023, paras 4-6, <https://www.accc.gov.au/system/files/public-registers/documents/ACEN%20Australia%20record%20of%20oral%20submission%20-%2004.07.23%20-%20PR%20VERSION%20-%20MA1000024%20Brookfield%20Origin.pdf>.
[17] Oral submission of Clean Energy Council, 25 July 2023, para 21, <https://www.accc.gov.au/system/files/public-registers/documents/Clean%20Energy%20Council%20record%20of%20oral%20submission%20-%2025.07.23%20-%20PR%20-%20MA1000024%20Brookfield%20Origin.pdf>
[18] Anthony Lucas statement, para 40(b).
[19] Anthony Lucas statement, para 48.

48 Brookfield benefits from procurement scale advantage.[20] It does not negotiate inputs on a per company, per project, or even per region basis. Brookfield negotiates on behalf of all existing and pipeline projects within the Brookfield group (solar, wind, batteries, EPC, etc). Brookfield is not immune to supply chain disruptions, but its strong relationships with suppliers means it feels them less. Brookfield's global relationships with key suppliers have delivered a range of benefits for its renewables projects including volume discounts, resilience, security of supply, access to competitive, long-term O&M terms and growth origination, responsive after-market support post fulfilment of the supply contract, as well as improved quality control.

49 Another widely acknowledged challenge for the renewable transition is the difficulty of recruiting personnel with the necessary specialist skills and expertise. The personnel required includes construction and engineering specialists, and personnel with expertise in dealing with local communities and planning approvals. Brookfield has over 100 years' experience as a global owner and operator of assets across a range of sectors, including a diverse set of clean energy and decarbonisation assets. Brookfield is one of the world's largest investors in renewable power and climate transition assets across a range of technologies. See section 6.8(b), section 6.10(d) and Annexure B of the Application for further details. Brookfield has a skilled workforce across the globe that it is able to deploy to assist with the 'green build-out'. In addition, Brookfield intends to build within Origin a new specialist team with expertise in wind generation development.

50 The benefits Brookfield (through the BGTF Consortium) is able to bring to the Origin Energy Markets business are well accepted by both third parties and Origin itself.

(a) **ANZ submission dated 23 June 2023**:[21] '*We support the Proposed Acquisition, as it will bring considerable ambition, expertise and capital which will assist in driving the ongoing transformation of the NEM at a critical juncture*.'

(b) **CBA submission dated 27 June 2023**:[22] '*The proposed transaction creates an incentive for an investor of the size, capability, experience and credibility of Brookfield to opt to invest in renewables in Australia in a meaningful manner, notwithstanding opportunities to invest elsewhere in the world. The scale of commitment to decarbonise a company in a carbon-intensive industry sets a high bar and potentially forges a path for others*.'

(c) **ACEN submission dated 4 July 2023**:[23]

*[11] ACEN believes that, if the barrier to shifting the generation pool to renewables is a financial one, then **Brookfield's claim that they are better positioned than other investors to lead Australia's energy transition is true**... [emphasis added]*

*[13] ACEN also feels that **Brookfield's global buying power and scale might put it in a better position than other developers to overcome global supply chain issues**. It is difficult to attract investment without pursuing large projects, as suppliers won't quote for less viable smaller projects… Brookfield may have monopsony power in global supply chains which would allow it to access those services more cheaply. (emphasis added)*

*[15] ACEN submits it is difficult to determine if, in the absence of the acquisition, other investors would replace the proposed 14GW of investment in renewable generation. **The value of having a***

---

[20] Application, paras 852 to 854; Edwards statement, paragraphs 28 to 29 and 104 – 105.
[21] ANZ submission, <https://www.accc.gov.au/system/files/public-registers/documents/Submission%20by%20ANZ%20-%2023.06.23%20-%20PR%20-%20MA1000024%20Brookfield%20Origin.pdf>.
[22] CBA submission, , <https://www.accc.gov.au/system/files/public-registers/documents/Submission%20by%20Commonwealth%20Bank%20of%20Australia%20-%2027.06.23%20-%20PR%20-%20MA1000024%20Brookfield%20Origin.pdf>.
[23] ACEN submission, <https://www.accc.gov.au/system/files/public-registers/documents/ACEN%20Australia%20record%20of%20oral%20submission%20-%2004.07.23%20-%20PR%20VERSION%20-%20MA1000024%20Brookfield%20Origin.pdf>.

***party like Brookfield willing to invest large amounts of capital in the transition is significant and it is a good thing for customers, the economy and reaching Australia's climate targets. There would be enough room for other players like ACEN to remain in the market and contribute their part, but the more renewable generation we can bring into the energy market the better**. (emphasis added)*

(d) **Iberdrola submission dated 1 August 2023**:[24] *'Brookfield's proposed investment in renewable energy and storage would be a positive for the Australian electricity system. Companies like Brookfield, with access to capital and the ability to invest in the transition, are important for the system*.'

(e) **Witness statement of Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin**:

> *Brookfield ownership will provide greater access to capital, expertise and enhanced risk management. These benefits will give Origin better access to capital, talent and know-how, as well as a greater capacity to invest in renewable assets and to do so more rapidly than Origin could achieve on its own. Whilst Origin could achieve its transition objectives without Brookfield ownership, in my view, it would take longer, be more difficult to overcome the challenges explained above [in the statement]… and would likely result in a smaller renewables portfolio at a higher cost.*[25]
>
> *As an ASX listed entity, Origin has a broad shareholder base of institutional and retail investors. Capital management requires balancing the return of capital and/or dividends to shareholders and the ability to reinvest capital in the energy transition. This provides a natural constraint to the amount of growth capital expenditure that Origin can allocate to its renewable energy ambitions. The size and speed of the transition could not be entirely funded from cashflow generated from the business and would ultimately require raising capital through public markets. Public markets have a much shorter return horizon, and tend to focus on how quickly the use of funds provides returns. The returns from renewable investments are much more longer-dated, which makes raising equity on public markets difficult and expensive. Brookfield is privately held and it has a specific aim of investing in renewable power and climate transition assets, so I would expect that its investors would understand the long-term nature of the investment required, and it has made public commitments to invest. Accordingly, under Brookfield ownership, the constraints inherent in being ASX listed will be removed, enabling faster direct investment in renewable assets while also allowing Origin to invest across the energy value chain. This is a benefit which affects all aspects of capital investment, enabling faster and larger rollout of renewables as well as investing in innovative customer solutions to deliver renewable energy at the times needed.*[26]

51 **Sixth, Brookfield's returns hurdle for the Proposed Acquisition is heavily dependent on completing the 'green build-out' plan**. As such, there can be a high degree of confidence that the BGTF Consortium will make the investments in the 'green-build-out' plan, noting in particular:

(a) **BGTF is a closed-end fund**: BGTF will sell the Origin Energy Markets business at the end of a 10-12 year investment horizon. A higher price is expected if the Origin Energy Markets business has been successfully transformed in the manner contemplated than if it had not. The return hurdle also contemplates an element of asset recycling (as discussed at paragraph 825 of the Application), which makes capital available to reinvest

[24] Record of Iberdrola's oral submission to the ACCC, 1 August 2023, para 28, <https://www.accc.gov.au/system/files/public-registers/documents/Iberdrola%20record%20of%20oral%20submission%20-%20PR%20VERSION%20-%2001.08.23%20-%20MA1000024%20Brookfield%20Origin.pdf>.
[25] Anthony Lucas statement, para 68.
[26] Anthony Lucas statement, para 69.

in renewable projects relatively quickly, facilitating faster development. As such, the size of BGTF's return to investors is dependent on the proposed investment in the 'green build-out' – the greater the build-out, the higher the return;

(b) **BGTF has been established specifically to fund a successful transition to renewables**: it has dual objectives – to achieve attractive risk adjusted financial returns and to generate measurable environmental change. 'Additionality' is a key requirement of BGTF's investment, which can only be achieved through the green build-out. Only by funding the 'green build-out' will BGTF achieve this second objective;

(c) **Brookfield's broader success is dependent on the success of its funds achieving their stated objectives**: Brookfield's reputation and ability to attract future investment depends on BGTF, including through its investment in the Origin Energy Markets, achieving its dual financial return and environmental transition objectives;

(d) **Brookfield's co-underwriters, GIC and Temasek, are investing with the same dual objectives**; and

(e) **BGTF is heavily incentivised to make the investments to deliver returns above the hurdle rate**: This is primarily because BAM, as an asset manager, is directly financially incentivised to maximise returns, through the 'carry' it earns.

This is discussed in further detail in the Applicants' response to the ACCC's s 90(6)(b) response dated 25 August 2023.

4 The ACCC requests such additional information relevant to the ACCC's determination, including how Brookfield plans to staff the team that will oversee the 14GW build-out. In particular:

(a) how responsibility for the build-out will be split between Origin and Brookfield

(b) the size of the team Brookfield currently has for developing renewable generation and storage projects in Australia, including how many of these staff are based in Australia

(c) the size of the team Brookfield expects to staff in-house if the transaction goes ahead, and how many of these staff Brookfield expects will be based in Australia

(d) key skills and role descriptions for Brookfield staff that will work on the build-out.

52 Brookfield's detailed plans on staffing the team that will oversee the 14 GW build-out have not yet been drawn up. **Confidential to Brookfield: Description of BGTF Consortium's plans for the Origin Energy Markets business.**

53 Broadly speaking, Brookfield's plans in respect of the 14 GW build-out are as follows.

A Split of responsibility between Origin and Brookfield

54 **Confidential to Brookfield: Description of BGTF Consortium's plans for the Origin Energy Markets business.**

55 **Confidential to Brookfield: Description of BGTF Consortium's plans for the Origin Energy Markets business.**

56 Brookfield, through its asset management function in Australia, will support the build-out by

(a) Brookfield Renewable personnel (both from the local team and from the global business) working closely with Origin Energy Markets' new development team, eg, around origination, technical advice, structuring, project financing and procurement; and

(b) **Confidential to Brookfield: The potential for Brookfield to second employees into Origin from the Brookfield Renewable business unit (local and global team members) in relation to Origin's grid scale distributed generation activities.**

B Size of Brookfield's current team for developing renewable generation and storage projects in Australia

57 Brookfield has a team of five Australian-based development staff. This team is supported by a global team of over 50 development, technical, procurement and commercial teams across the world. The five roles based in Australia are made up of a Chief Operating Officer (***COO***), a Head of Development, two Development managers, and a Director – Commercial and Project Finance.

C Size of the team Brookfield expects to staff in-house if the transaction goes ahead

58 The Brookfield team is expected to retain substantially the same number of staff in-house, ie, five. However, there may be scope to add 1 – 2 more renewables development professionals at Brookfield to manage the investment in Origin.

D Key skills and role descriptions for Brookfield staff

59 **Confidential to Brookfield**, Chief Operating Officer, Brookfield Renewable Asia (Based in Australia)

(a) **Role description**: **Confidential to Brookfield** is the COO for Brookfield Renewable in Asia. He oversees the renewable power operations in the region and is responsible for the execution of financial and commercial strategies of the operating assets.

(b) **Key skills**: **Confidential to Brookfield** has over 15 years of financial, commercial, operating and investment experience across the telecommunications, manufacturing, power, shipping, infrastructure, transport & logistics sectors. Most recently, he was the CFO of the Brookfield Renewable in Asia where he delivered the Terraform Global Asia asset integration into Brookfield and set up the Brookfield Renewable platform in China.

(c) **Role description for the build-out**: The COO role covers the procurement function for the region. Brookfield has more than 150 GW of global development pipeline across Hydro, Wind, Solar and BESS and strong strategic relationships at leadership level with Tier 1 vendors. The COO and the procurement team will draw on Brookfield's global scale and relationships to secure attractive and competitive terms for key inputs to renewable projects. Long term relationships will allow Brookfield to engage in discussions with strategic partners to support the overall buildout.

60 **Confidential to Brookfield**, Head of Development (Based in Australia)

(a) **Role description**: **Confidential to Brookfield** is the Head of Development for Brookfield Renewable where he is responsible for developing Brookfield's renewable power assets in Australia.

(b) **Key skills**: **Confidential to Brookfield** has over 20 years of experience in developing, designing, constructing, and commissioning large scale power generation and transmission assets in Australia, New Zealand, and the United Kingdom. Prior to joining Brookfield in 2022, **Confidential to Brookfield** was Head of Project Development for Alinta Energy where he was responsible for Alinta's project development pipeline, including Yandin Wind Farm, Chichester Solar Farm, Newman BESS and the Roy Hill transmission line project.

(c) **Role description for the build-out**: The Head of Development role will focus on providing global and local developer relationships to Origin Energy Markets' new development team to provide whole of market coverage in origination of projects. **Confidential to Brookfield**. Brookfield's global development network has a strong track record, targeting the commissioning of 15 GW of renewable projects globally over the next three years. The head of development will assist in bringing that capability in relation to commissioning and delivering projects to Origin Energy Markets.

61 **Confidential to Brookfield**, Senior Vice President, Operations (Based in Ireland)

(a) **Role description**: **Confidential to Brookfield** is a Senior Vice President in Brookfield Renewable. **Confidential to Brookfield** is responsible for supporting the business' corporate technical and operations function where he provides leadership and support across Brookfield Renewable assets and portfolio companies.

(b) **Key skills**: **Confidential to Brookfield** joined Brookfield in 2014 as Head of Operations for a European based wind platform under Brookfield's ownership. He has more than 25 years of electricity industry experience, spanning development, construction and operations in transmission and distribution, thermal power generation and renewable power generation. Prior to joining Brookfield, **Confidential to Brookfield** held various management positions in power generation facilities for ESB International, Viridian Group and Bord GaisEnergy, predominately in modern gas-fired utility applications, but also including desalination, biomass, oil and coal.

(c) **Role description for the build-out**: **Confidential to Brookfield** will provide diligence, advice and insight to global best practice to optimise the design of the Origin Energy Markets' fleet/sites to deliver renewable projects with a competitive levelized cost of energy. During the operational phase, this role will oversee the optimised operational management program to deliver reliable, high availability and safe fleet during the operational phase.

62 **Confidential to Brookfield**, Director – Commercial and Project Financing (Based in Australia)

(a) **Role description**: **Confidential to Brookfield** is a Director in Brookfield Renewable with responsibility for project finance and large C&I commercial solutions.

(b) **Key skills**: **Confidential to Brookfield** has been involved in the Australian energy market since 2016, leading an independent advisory team arranging non-recourse financing for over 3 GW of renewable capacity in the NEM. Prior to that he spent seven years as part of NORD/LB's energy origination team in London covering UK, Ireland, France and Germany.

(c) **Role description for the build-out**: **Confidential to Brookfield** will focus on appropriating Brookfield's global banking relationships and project finance capability for Origin Energy Markets' renewable projects. Project Financing is a critical funding component of project development. **Confidential to Brookfield**.

5 The ACCC requests such additional information relevant to the ACCC's determination, including why Brookfield considers it would be able to complete its 14 GW build-out in the current market. Without limiting the Applicants' response, the ACCC requests:

(a) further details as to how Brookfield plans to complete its proposed 14GW development by 2033. This should include:

(i) **an overview of how the build-out will occur; for example, for each year up until 2033, the amount of new generation capacity Brookfield expects to bring online (totalling 14GW), the state or territory where it will occur, and if possible the name and location of the relevant generation projects,**

(ii) **information regarding Brookfield's anticipated projects and their expected completion date (and why these projects would not be progressed in the absence of the Proposed Acquisition, whether by Brookfield or another developer),**

(iii) **any documented plans for Brookfield's proposed development (that have not yet been supplied)**

63 Annexure 22.8 to the Application sets out the BGTF Consortium's current plan in respect of its 'green build-out' for the Origin Energy Markets business. This document should be read in conjunction with Annexure 1.14 (IC presentation) and Annexure 1.15 (Appendix to IC presentation) to the Application and Annexure 155n01_01_01 (BGT.023.001.0001) which was provided to the ACCC in response to Schedule 1 to the ACCC's S155 Notice. Together, these documents set out the BGTF Consortium's plans in respect of the 'green build-out' including timing, GW to come online, States / Territories being considered, as well as specific projects which have been considered as part of the build-out.

64 As noted in response to question 1 of Schedule 1 to the ACCC's S155 Notice, the exact projects that the BGTF Consortium will pursue under the 'green build-out' plan, in what years, and the technology split that will be pursued, is uncertain. This will depend on available opportunities, the build-out of new transmission lines, market developments and technological developments over the 10 year duration of the plan. In addition, the composition of the development pipeline may change on a regular basis (ie some projects go out as some projects come in).

65 The 'green build-out' plan was developed through work done by Brookfield to understand how much capacity Origin would need to service a 35 TWh electricity load in 2033. Brookfield determined that around **Confidential to Brookfield**TWh would be required by 2033. An exercise was then undertaken to ensure: (i) there were enough potential projects to meet this build-out plan, and (ii) those projects could come online, ie, reach 'commercial operation date' (COD) by 2033. Therefore, as noted above, the 'green build-out' plan includes a consideration of a number of other projects that are not currently part of Origin's existing pipeline and owned by third parties. In developing the plan, Brookfield considered AEMO's list of proposed generation projects in the NEM published on its website under 'NEM Generation Information'[27] to ascertain if there were up to 14 GW of viable renewable and storage projects currently under development in Australia which could form part of the 'green build-out'. **Confidential to Brookfield** The exercise was also used to understand what the 14 GW potential build-out represented as a percentage of the

[27] AEMO, *Forecasting and planning data – generation information* (July 2023), <https://aemo.com.au/energy-systems/electricity/national-electricity-market-nem/nem-forecasting-and-planning/forecasting-and-planning-data/generation-information>.

serviceable addressable market of renewable projects. The serviceable addressable market refers to the projects listed by AEMO excluding those Brookfield considered could not form part of the 'green build-out' plan, for example, because of their location, because they were owned by other retailers, or were too unlikely to proceed.

66 As discussed in response to question 1 of Schedule 1 to the ACCC's S155 Notice dated 19 June 2023 and in chapter 3 of the Application, independently of the Proposed Acquisition, Brookfield (through BGTF) is currently actively pursuing two renewable generation and storage projects in Australia, being:

(a) Moonlight Range Wind Farm and BESS, central Queensland (315 MW of wind capacity and 105 MW of storage capacity); and

(b) Two development opportunities with Greenleaf Renewables, Queensland (600 MW wind and **Confidential to Brookfield: 150 - 250** BESS),

67 Absent the Proposed Acquisition, the development of both the Moonlight Range and Greenleaf Renewables opportunities is dependent on the Brookfield Investment Committee approving a final investment decision. This will require the local team to secure an offtake agreement with retailers and/or industrial customers.

68 Under the Proposed Acquisition, both opportunities would be contributed to Origin Energy Markets and form part of the up to 14 GW build-out proposed by the BGTF Consortium for Origin Energy Markets. The Proposed Acquisition gives Brookfield confidence that it has a guaranteed offtaker, making it more likely to underwrite (and continue underwriting) the above investments.

69 Brookfield is also assessing several other potential opportunities in wind, solar and BESS, however, discussions with each of the developers remain at an early stage and are on a non-exclusive basis. If the Proposed Acquisition proceeds, Brookfield will consider incorporating these into its 'green build-out' plan for the Origin Energy Markets business.

70 Brookfield is also considering renewable energy projects across Queensland, New South Wales, Victoria and South Australia if the Proposed Transaction proceeds to further the 14 GW build-out. None of these projects, however, are at the same stage as the Queensland projects outlined above. See paragraphs 307 to 308 of the Application for further details.

71 Based on the current market and the opportunities available today, the planned investment for the 14 GW build-out, by state or territory and technology within the NEM, is in

72 ***Figure* 1** below.

***Figure 1*: Forecast areas for 14 GW of new renewable generation and storage**

Confidential to Brookfield

Source: Brookfield

73 In developing its business plan for the Origin Energy Markets business, the BGTF Consortium contemplated the estimated GW required on a year-by-year basis to reach its 14 GW build-out. This is set out in **Figure 2** and **Figure 3** below. As discussed above, however, the exact projects that the BGTF Consortium will pursue under the 'green build-out' plan, in what years, and the technology split that will be pursued, is uncertain.

***Figure* 2: Forecast timing for 14 GW of new renewable generation and storage – project development pipeline**

Confidential to Brookfield

Source: Brookfield, Annexure 1.15 to the Application, slide 64.

***Figure* 3: Forecast timing for 14 GW of new renewable generation and storage – existing and new generation by category**

Confidential to Brookfield

Source: Brookfield, Annexure 1.15 to the Application, slide 65.

74 **Figure 4** and **Figure 5** show the areas of focus for future development within the relevant parts of the NEM. The areas identified in the below are based on projects that are at various stages of early development according to AEMO databases. They do not show sites where there is current development (ie, construction) by Brookfield, and are preliminary opportunities only. Given the lead time in developing projects, including securing sites and necessary approvals, the question of whether projects will actually proceed in these locations is inherently uncertain and relies on these projects being progressed by their existing proponents and in some cases development of the relevant transmission network projects (for example, the Central West Orana and New England REZs).

***Figure* 4: Brookfield future wind farm project opportunities in the NEM**

Confidential to Brookfield

Source: Brookfield

***Figure* 5: Brookfield future storage project opportunities in the NEM**

Confidential to Brookfield

Source: Brookfield

5 Why Brookfield considers it would be able to complete its 14 GW build-out in the current market. Without limiting the Applicants' response, please provide:

(b) information to support that the build-out is realistic, despite bottlenecks relating to network capacity and connections

75 As discussed in paragraphs 22 to 40 of the 23 August Response, the Applicants agree that grid connection bottlenecks and network capacity constraints are a challenge facing investors / developers today. There are government and industry led processes underway, however, to address the grid connection and network capacity challenges including the development of new renewable energy zones supported by new transmission networks. The BGTF Consortium's 'green build-out' plan continues for a 10 year period. It takes into account existing transmission constraints and how they are likely to be overcome throughout that 10 year period.

76 In relation to whether it is realistic that the Applicants will be able to overcome the transmission constraint challenge, the BGTF Consortium's current business plan does not involve it investing in transmission. The BGTF Consortium's 'green build-out' plan will, however, allow Origin to develop additional renewable generation more quickly than would otherwise be the case as transmission constraint issues are resolved over the 10 year life of the business plan. As discussed above and further below, a key benefit of the Proposed Acquisition is that it will combine the BGTF Consortium's transition capital and renewables expertise with Origin's short electricity position. The Origin short position creates a natural offtake for new generation developed using BGTF Consortium capital and expertise, removing the need for PPAs. Where there are transmission constraints, resulting in projects waiting for connections, an integrated developer is more likely to move the project further forward than a non-integrated developer. Any non-integrated developer

would have significant offtake risk, meaning that they are less likely to meaningfully advance a project whilst waiting for connection. It is understood within the industry that some less capitalised developers have large pipelines, but no capital to fund those pipelines. In addition, other developers who have large pipelines and the balance sheets to develop its projects are not taking projects to FID because they do not have a pathway to contracts. As such, the Proposed Acquisition will put Origin in a position where it can continue to advance projects so that they can be developed rapidly once transmission constraints are resolved.

77 In addition to grid connection bottlenecks and network capacity constraints, there are numerous other challenges associated with the development of new renewable generation and storage. It is not possible to know which of these challenges is the 'binding constraint'. All challenges will need to be addressed in order to come close to achieving Australia's renewable targets. But importantly, these challenges exist irrespective of whether the Proposed Acquisition occurs or does not occur.

78 As transmission constraints are addressed, Origin owned by the BGTF Consortium will be in a position to respond rapidly by constructing new generation and storage. In particular, Origin owned by the BGTF Consortium will be able to overcome other challenges that exist today and will become even more critical as transmission constraints are resolved. The additional challenges include:[28]

(a) access to capital prepared to take development and construction risk;

(b) certainty of offtake;

(c) procurement capability (including access to scarce inputs); and

(d) lack of expertise and access to scarce skills.

79 The BGTF Consortium is uniquely placed to overcome these challenges. As outlined above, it has capital immediately available for investment in the transition and relationships with private co-underwriters seeking a home for capital that will fund the 'green build-out' plan and assist in the energy transition. The BGTF Consortium, through Brookfield, also has global renewables procurement and technical expertise, and a track record in Europe and other jurisdictions of delivering on equally ambitious plans. It is therefore well placed to address each of the challenges facing renewable developers and investors in Australia, underpinning the certainty that the 'green build-out' plan will be achieved.

80 It is also worth noting, as discussed in detail in the Application as well as the Applicants' response to the ACCC's section 90(6)(b) notice dated 25 August 2023, that Brookfield has strong financial and reputational incentives to deliver the green build-plan. Although the BGTF Consortium's plan is ambitious, it is realistic. Careful consideration has been given to developing a ''green build-out' plan' that is achievable within the life of the BGTF Consortium's investment in the Origin Energy Markets business, taking into account all relevant external factors.

[28] Application, section 3.1.3 and 6.10; Iberdrola submission; para 14; Applicants' response to the ACCC's S90(6)(b) Notice in respect of the Harris report, paras 26 to 40.

5 The ACCC requests such additional information relevant to the ACCC's determination, including why Brookfield considers it would be able to complete its 14 GW build-out in the current market. Without limiting the Applicants' response, the ACCC requests:

(c) information about how Brookfield intends to continue with the build-out as planned in circumstances where government decision making may be at odds with Brookfield's plans (such as government's role in deciding when coal power plants can close).

81 As noted in the Application and the Applicants' response to Schedule 1 to the S155 Notice, the 'green build-out' plan involves building-out Origin Energy Markets' internal generation to, on average, **Confidential to Brookfield: the significant majority** of its aggregate customer load requirements by 2033. Specifically, this will involve the development of up to 14 GW of new renewable generation and storage capacity for Origin Energy Markets by 2033 to address its wholesale electricity requirements and *facilitate* the retirement of the Eraring Power Station.

82 Under the Proposed Acquisition, the BGTF Consortium intends to retire the Eraring Power Station as soon as possible, provided there is sufficient replacement capacity such that doing so will not pose risks to system stability. Brookfield will work closely with the NSW government to ensure closure does not adversely impact grid stability or reliability.

83 It has always been the BGTF Consortium's intention for the Origin Energy Markets business to continue to consult with the NSW government around an appropriate closure date for Eraring (see, for example, slide 31 of Annexure 1.14 to the Application). The proposed 'green build-out' plan will remain unaffected by any government announcements to delay the closure of coal powered plants. As noted below, and discussed in detail in response to Schedule 1 to the S155 Notice, **Confidential to Brookfield: BGTF Consortium's plans for Eraring Power Station.**

84 In any event, the BGTF Consortium understands that any decision by the NSW government to postpone the closure of Eraring will depend on grid stability and security (see, for example, slide 58 to Annexure 1.15 to the Application).

6 The ACCC requests additional evidence that Brookfield would be able to close Eraring by August 2025 and earlier than Origin.

85 The BGTF Consortium has no intention to close Eraring before August 2025 (and has not made representations to this effect). The August 2025 closure date represents the absolute earliest that Origin (or a BGTF Consortium owned Origin) **could** retire the power station, under the relevant NER notice requirements.[29] Neither Origin, nor a BGTF Consortium controlled Origin could legally close Eraring prior to August 2025.

86 Origin, absent the Proposed Acquisition, has not yet made a final decision on the timing of retirement of Eraring, noting in an announcement to the ASX on 20 April 2023 that:[30]

> *Origin will continue to assess the market over time, and this will help inform the final timing for closure of all four units at Eraring. Origin will also continue to actively engage with the market operator, NSW Government, our people and the local community regarding plans for Eraring's closure.*

[29] Under NER 2.10.1(c3), generators must list their proposed closure dates, and are allowed to extend them at any time, but may not bring them forward in the last 42 months unless granted an Australian Energy Regulator (***AER***) exemption. In practice, this means that coal powered generators are required to provide AEMO with a 'Notice of Closure' at least 42 months before their earliest possible closure date.

[30] Origin, *ASX Announcement – Origin approves construction of large-scale Eraring battery* (April 2023), <https://announcements.asx.com.au/asxpdf/20230420/pdf/45ntwkm697lp51.pdf>

87 A key factor in the decision about timing of the closure of all four units at Eraring will depend on the extent to which replacement generation and storage is available,[31] among a range of other market factors. This is also consistent with the position of the NSW Government, and Luke Edwards, Managing Director and Head of Renewable Power and Transition – Australia at Brookfield who noted in his statement:

> *… if Origin does not have sufficient replacement capacity in place by 2025 or the market has not developed enough replacement capacity in that timeframe, there are various scenarios where Eraring's closure could be delayed to ensure the security of supply for NSW businesses and residents. This is because withdrawing substantial amounts of generating capacity from the National Electricity Market (**NEM**) without sufficient renewable replacement capacity and firming poses risks to system stability and reliability.*[32]

88 The BGTF Consortium's intention has always been to retire the Eraring Power Station as soon as possible, provided there is sufficient replacement capacity such that doing so will not pose risks to system stability.[33] Brookfield will work closely with the NSW government to ensure closure does not adversely impact grid stability or reliability.

89 The date of closure will depend on the timing of new electricity infrastructure being built in NSW, in particular:

(a) **New transmission**: Central-West Orana REZ, New England REZ, South West REZ, Humelink, Project Energy Connect, and the Hunter REZ;

(b) **Commissioning of Snowy 2.0**: This project has had significant delays; and

(c) **New hydro in NSW**: The construction of new and/or the expansion of existing hydroelectric generation facilities in NSW, which may or may not be supported by the NSW Long Term Energy Service Agreements auction processes

90 **Confidential to Brookfield: BGTF Consortium's plans for Eraring Power Station.**

91 In any event, the Applicants consider that the BGTF Consortium will be able to retire Eraring at least as soon as, and potentially sooner than, it could be under Origin ownership in the counterfactual. The BGTF Consortium not only has the capital to buy a business with high emissions but brings a proven ability to build renewable generation and storage assets to replace retired assets at pace. This was acknowledged by Anthony Lucas, Executive General Manager, Future Energy and Technology at Origin:

> *Under Brookfield ownership, the increased access to capital to fund investment in renewable assets would allow Origin to decarbonise more rapidly than it would otherwise do so. Under the CTAP [confidential to Origin], Origin expects to decarbonise at a similar speed as the market. As a combined entity, I consider that Origin would be able to decarbonise more rapidly than the market.*[34]

7 Relationship between competition issues and public benefits

92 The ACCC in its second transparency letter has raised concerns that Brookfield as owner of AusNet may potentially engage in anti-competitive conduct. It has also raised concerns about the certainty of the 'green build-out' and associated public benefits. We submit that the ACCC, in

[31] Luke Edwards statement, para 61.
[32] Luke Edwards statement, para 61.
[33] Applicants' response to Schedule 1 to the s155, paragraphs 5.15 to 5.18; Application, slide 58 of Annexure 1.15; Application, paragraphs 281(b) and 801.
[34] Anthony Lucas statement, para 78.

weighing up the two elements prior to making its determination, should carefully consider two factors going to the relationship between the two elements, being:

(a) the relative probabilities of the competitive detriments arising to the point where they amount to a **substantial** lessening of competition, versus the likelihood of the 'green build-out' occurring; and

(b) the correlation between competitive detriments and public benefits.

93 On the first point, the second transparency letter suggests the ACCC is applying one standard in assessing how certain a substantial lessening of competition must be and a higher standard in assessing how certain public benefits must be. The ACCC seems to assume a high level of certainty about frankly speculative and implausible potential competitive detriments occurring, while simultaneously applying an unwarranted level of scepticism about the claimed public benefits. The claimed public benefits are strongly supported by Brookfield's financial imperatives, by the evidence Brookfield has provided, by a number of disinterested third party submissions as well as our discussions with various levels of government. The language of section 90 requires that the same test of certainty and causation be applied to both the substantial lessening of competition and public benefit limbs. The metaphorical “bar” for probability of each element needs to be set at the same level.

94 On the second point, the ACCC should keep in mind that the only interaction between Origin and the AusNet transmission business today is the Mortlake Power Station, which makes up only a de minimis portion of Victorian generation output and is already connected to the AusNet transmission network. If this position does not change, there can be no concerns about lessening of competition.

95 Brookfield expects the situation ***will*** change because Brookfield Renewable's green build out plan for Origin Energy Markets will see a significant amount of new generation built (14 GW), a proportion of which is likely to be in Victoria. Brookfield has submitted that the 'green build-out' is a material public benefit. The ACCC has accepted that '*an increased level of renewable generation development, or a quicker transition to renewable sources, in the National Electricity Market would be a material public benefit*'.

96 Although the ACCC has expressed concerns about a potential substantial lessening of competition on the one hand and scepticism about the green build out public benefit on the other, it should be remembered that competitive concerns do not arise ***without*** the 'green build-out' (or the Proposed Acquisition) and level of connections a Brookfield Renewable owned Origin is seeking exceeding the counterfactual. Put another way, some level of 'green build-out' over and above the Brookfield counterfactual is a necessary condition for there to be any potential competition concerns.

97 The ACCC should also bear in mind that in the counterfactual Brookfield Renewable may seek to develop renewable generation and storage assets in Victoria (recognising the difficulties in doing so without a customer base). In the Applicants' view, discrimination is not possible for the reasons given. If it was, however, that discrimination could occur in the counterfactual if Brookfield Renewable was seeking connection in relation to new renewable generation and storage.

98 We submit these are relevant factors to consider when the Commission weighs up public benefit against potential competitive detriment.

Public version

Annexure B

Brookfield LP and MidOcean Energy acquisition of Origin Energy Limited

Applicants' response to the ACCC's transparency letter dated 29 August 2023

This document sets out MidOcean Energy's response to the second question raised in the ACCC's second transparency letter dated 29 August 2023.[1]

Horizontal overlap in the East Coast domestic gas market

2 The ACCC requests the Applicants give the ACCC such additional information and documents that they consider relevant to the ACCC's determination including:

(a) the JOAs;

(b) the shareholder agreements for APLNG and QCLNG;

(c) the gas sales agreement between the QCLNG joint venture participants and Walloons; and

(d) identifying any and all provisions in the above agreements that prevent MidOcean from receiving and/or sharing commercially sensitive information between APLNG and QCLNG.

A Overview

1 The ACCC's 2nd transparency letter notes that the ACCC continues to have concerns regarding 'the ability of MidOcean to share competitively sensitive information between APLNG and QCLNG'.

2 MidOcean strongly considers that the ACCC can be satisfied that sharing of such information will not occur. That is not an ability MidOcean has, because:

(a) MidOcean will not be the marketer for APLNG's sales to the East Coast gas market (or upstream operator for APLNG), which will instead be ConocoPhillips;

(b) MidOcean will not be the marketer for QCLNG's sales to the East Coast gas market, which will instead be the Shell/CNOOC owned Walloons Coal Seam Gas Company Pty Limited (***Walloons***) (or operator for QCLNG, which will continue to be Shell);[2]

(c) MidOcean has no ownership of, or governance rights in relation to, Walloons, and Walloons is not required to seek approval of MidOcean, QCLNG or any joint venture committee in which MidOcean would have any representation, prior to entering into gas sales agreements; and

(d) MidOcean has no right to receive marketing, pricing or customer information in relation to QCLNG sales to the East Coast gas market, other than receiving an aggregated net revenue outcome of such sales through monthly invoices provided for gas supplied to Walloons (from which it is not possible to back-calculate current individual customer pricing).

[1] Unless otherwise stated, capitalised terms used in this response have the same meaning as in the Application.
[2] Shell, *About QGC* <https://www.shell.com.au/about-us/projects-and-locations/qgc/about-qgc.html> (**Annexure 1**); Shell, *Walloons* <https://www.shell.com.au/about-us/projects-and-locations/qgc/walloons-trading.html> (**Annexure 2**).

3 As a result, MidOcean has no access to QCLNG's East Coast gas related competitively sensitive information. Even if it was assumed MidOcean's representation on the APLNG board would result in it acquiring competitively sensitive information regarding APLNG's East Coast gas marketing, because MidOcean will have no role in relation to QCLNG East Coast gas marketing there is no avenue through which it could share that information.

4 MidOcean also considers that, even if it was assumed that despite the issues noted above, it was hypothetically still possible for MidOcean to share competitively sensitive information, MidOcean clearly has no incentive to engage in such information sharing because:

(a) it stands little to gain from doing so, because it receives revenue from such a small share of QCLNG domestic sales given its 1.25% overall project interest, and because it is LNG sales, not domestic sales, which are material to the profitability of the business; and

(b) it has strong incentives not to engage in this behaviour as it:

(i) contravenes confidentiality restrictions, with such defaults potentially creating threats to MidOcean's interests in the projects;

(ii) would significantly damage MidOcean and EIG's reputation, and jeopardises MidOcean's business plan for a portfolio of LNG interests and the ability to raise equity and debt investments for future portfolio investments; and

(iii) it would be a clear breach of the *Competition and Consumer Act 2010* (Cth) that is highly likely to be revealed given the information production powers the ACCC has in relation to the ongoing East Coast Gas market inquiry.[3]

5 Detailed submissions with reference to the contractual framework that exists for both projects is set out below.

B Information in respect of APLNG East Coast gas marketing

APLNG companies not shareholders sell East Coast gas

6 All natural gas from the APLNG project sold in the East Coast gas market is marketed and sold by Australia Pacific LNG CSG Marketing Pty Limited (***APLNG CSG Marketing***), a subsidiary of Australia Pacific LNG Pty Limited (***APLNG***), not the individual shareholders in APLNG.[4]

7 APLNG CSG Marketing is also responsible for all purchases of gas from third parties in the East Coast gas market and arranging all transportation for East Coast gas market volumes.[5]

ConocoPhillips will be the marketing agent for APLNG - MidOcean has no involvement in day to day marketing

8 The marketing for APLNG's East Coast gas market sales is actually undertaken by the CSG Marketing Agent **Confidential to MidOcean Energy**.[6]

9 **Confidential to MidOcean Energy** the CSG Marketing Agent:

(a) is given exclusive charge of all CSG marketing activities;[7]

(b) is responsible for negotiation of all gas sales agreements;[8] and

[3] See eg, ACCC, *ACCC Gas Inquiry 2017-2030 Interim update on east coast gas market* (June 2023) <https://www.accc.gov.au/system/files/Gas%20inquiry%20June%202023%20interim%20report%20%28July%202023%20update%29.pdf> (**Annexure 3**).
[4] **Confidential to MidOcean Energy**.
[5] **Confidential to MidOcean Energy**.
[6] **Confidential to MidOcean Energy**.
[7] **Confidential to MidOcean Energy**.
[8] **Confidential to MidOcean Energy**.

(c) is entitled to administer such agreements on behalf of the relevant APLNG group companies that are a party.[9]

10 While the CSG Marketing Agent is currently Origin Energy Upstream Operator Pty Ltd (***OEUO***), as noted in the Applicants' previous submissions the intention is for ConocoPhillips to assume the role of CSG Marketing Agent (and the Upstream Operator and Corporate Services Provider roles). **Confidential to MidOcean Energy**.

11 **Confidential to MidOcean Energy**.[10] **Confidential to MidOcean Energy.**[11] **Confidential to MidOcean Energy**.

12 Consequently, there will be no period in which MidOcean will have any role in the day to day marketing or negotiation of APLNG East Coast gas market sales.

APLNG board approval of sales

13 MidOcean acknowledges that:

(a) **Confidential to MidOcean Energy**;[12] and

(b) that MidOcean will have a right to appoint directors to the APLNG board.[13]

14 However, MidOcean considers MidOcean appointees on the APLNG board do not create risks of sharing competitively sensitive information because:

(a) **Confidential to MidOcean Energy**;

(b) as discussed in paragraphs 26 to 31 below, MidOcean has no access to individual customer or pricing information for QCLNG sales to the East Coast gas market, so it has no access to competitively sensitive marketing information which could be shared with APLNG or ConocoPhillips at the APLNG board level;

(c) as discussed in paragraphs 23 to 25 below, MidOcean has no involvement in QCLNG gas marketing to the East Coast (and no board or other governance rights in relation to Walloons which undertakes the marketing), such that it has no avenue for sharing with QCLNG of any competitively sensitive information regarding APLNG East Coast gas sales it does obtain;

(d) disclosure to Walloons (or the other QCLNG participants) would be:

(i) a clear breach of the *Competition and Consumer Act 2010* (Cth) that would be extremely likely to be revealed given the information production powers the ACCC has in relation to the ongoing East Coast Gas market inquiry;

(ii) a breach of the APLNG Shareholders Agreement confidentiality regime **Confidential to MidOcean Energy** (as discussed in paragraphs 16 to 19 below); and

(iii) a misuse of APLNG information by the directors appointed by MidOcean which would expose those directors to personal liability for a breach of their director's duties owed to APLNG.

15 For completeness, MidOcean notes that it will not have positive control of the board **Confidential to MidOcean Energy**, given MidOcean's voting rights will be 25.01% reflecting its post-

[9] **Confidential to MidOcean Energy**.
[10] **Confidential to MidOcean Energy**.
[11] **Confidential to MidOcean Energy**.
[12] **Confidential to MidOcean Energy**.
[13] **Confidential to MidOcean Energy**.

completion shareholding in APLNG,[14] **Confidential to MidOcean Energy**.[15] This means that any collusion requiring action by APLNG would require the support and involvement of ConocoPhillips.

Confidentiality restrictions prohibit disclosure of marketing information

16 There are strict confidentiality obligations that will require the MidOcean shareholder in APLNG to keep confidential all non-public domain information relating to the APLNG Shareholders Agreement or any members of the APLNG group or its business affairs.[16]

17 The ability of APLNG shareholders to disclose such information to related entities (and their officers, employees, advisers and contractors) is limited **Confidential to MidOcean Energy**.[17] That threshold would clearly not be met in relation to disclosure to MidOcean related entities or personnel associated with the QCLNG interest, such that any attempt by MidOcean to do so would leave its APLNG participant in default under the APLNG Shareholders Agreement.

18 **Confidential to MidOcean Energy**.[18] **Confidential to MidOcean Energy**.[19] That provides a very strong incentive for MidOcean not to engage in anti-competitive information sharing **Confidential to MidOcean Energy**.

19 MidOcean has no incentive to put at risk the APLNG stake for any theoretical marginal benefit to QCLNG that might potentially arise through sharing of pricing information (given that it would only share in a very small proportion of any revenue increase given its 2.5% interest in Train 2 (being a 1.25% interest in the overall QCLNG project)).

C Information in respect of QCLNG East Coast gas marketing

East coast gas is sold by Walloons not the QCLNG Participants

20 All natural gas from the QCLNG project sold in the East Coast gas market is sold by each of the participants to Walloons, under a series of gas supply agreements from each underlying joint venture (the ***Walloons GSAs***).[20]

21 Walloons is then the seller of such QCLNG produced gas to all East Coast gas customers.[21]

22 As confirmed by MidOcean in previous submissions (and confirmed again in QGC's submission), there is no changes being made to the Walloons marketing arrangements in connection with MidOcean's acquisition of Tokyo Gas' interest in the QCLNG project.

MidOcean has no interest in Walloons or approval rights over its actions

23 Walloons is owned entirely by Shell (75%) and CNOOC (25%), without any Tokyo Gas ownership.[22]

24 Consequently, MidOcean will have no ownership or governance rights over the entity which is doing all marketing of QCLNG gas in the East Coast gas market through which it could obtain any information or have any avenue to share information.

25 MidOcean will also have no role in approving Walloons' gas sales agreement.

MidOcean will not receive marketing information from Walloons

[14] **Confidential to MidOcean Energy**.
[15] **Confidential to MidOcean Energy**.
[16] **Confidential to MidOcean Energy**.
[17] **Confidential to MidOcean Energy**.
[18] **Confidential to MidOcean Energy**.
[19] **Confidential to MidOcean Energy**.
[20] **Confidential to MidOcean Energy**.
[21] **Confidential to MidOcean Energy**.
[22] *Walloons* <https://www.shell.com.au/about-us/projects-and-locations/qgc/walloons-trading.html> (**Annexure 2**).

26 As MidOcean will have no ownership or governance rights in respect of Walloons, the only information MidOcean will have access to is:

(a) the production volumes **Confidential to MidOcean Energy**;[23] and

(b) any information it has a right to receive as a seller under the Walloons GSAs.

27 **Confidential to MidOcean Energy.** MidOcean's QCLNG participant will only receive aggregate volumes and aggregate amounts payable to it **Confidential to MidOcean Energy**.[24]

28 It is simply not possible to back-calculate from the invoiced amount any East Coast gas market individual customer pricing or even understand current market pricing from the aggregate volume and aggregate net revenue amounts provided. **Confidential to MidOcean Energy**[25] **Confidential to MidOcean Energy**.

29 **Confidential to MidOcean Energy**.[26] **Confidential to MidOcean Energy.**[27] **Confidential to MidOcean Energy.**[28] **Confidential to MidOcean Energy**.

30 **Confidential to MidOcean Energy**.[29] **Confidential to MidOcean Energy**.[30] **Confidential to MidOcean Energy: There is a verification process, but that process will not result in MidOcean having any right to receive the relevant records itself.**[31]

31 Consequently, it is clear that MidOcean will not have access to any competitively sensitive information in respect of QCLNG's East Coast gas market sales.

Confidentiality restrictions prohibit disclosure of marketing information

32 Each of the Walloons GSAs[32] and QCLNG Coordination and Joint Venture Alliance Agreement (***QCLNG JV Agreement***)[33] contains a confidentiality clause which imposes restrictions on disclosure of QCLNG confidential information.

33 Disclosure to related bodies corporate of a party to the QCLNG JV Agreement is only permitted where:

(a) **Confidential to MidOcean Energy**;[34] or

(b) **Confidential to MidOcean Energy: limited circumstances specified in the QCLNG JV Agreement apply.**[35]

34 That threshold would clearly not be met in relation to disclosure to MidOcean related entities or personnel associated with the QCLNG interest, such that any attempt by MidOcean to do so would leave its QCLNG participant in default under the Walloons GSAs and QCLNG JV Agreement.

35 In any case, for the reasons noted earlier in this submission, MidOcean has no competitively sensitive information to share in any case.

[23] **Confidential to MidOcean Energy**.
[24] **Confidential to MidOcean Energy**.
[25] **Confidential to MidOcean Energy**.
[26] **Confidential to MidOcean Energy**.
[27] **Confidential to MidOcean Energy**.
[28] **Confidential to MidOcean Energy**.
[29] **Confidential to MidOcean Energy**.
[30] **Confidential to MidOcean Energy**.
[31] **Confidential to MidOcean Energy**.
[32] **Confidential to MidOcean Energy**.
[33] **Confidential to MidOcean Energy**.
[34] **Confidential to MidOcean Energy**.
[35] **Confidential to MidOcean Energy**

MidOcean has no control over decisions of QCLNG

36 For completeness we note that the 2.5% interest in QCLNG's Train 2 (being a 1.25% interest in the overall QCLNG project), does not provide MidOcean with any control over key decisions of the QCLNG project.

37 In particular:

(a) **Confidential to MidOcean Energy**.[36] **Confidential to MidOcean Energy**.[37] **Confidential to MidOcean Energy**; and

(b) **Confidential to MidOcean Energy: QCLNG governance arrangements will not require MidOcean approval, including for programs and budgets.**[38]

38 This position simply reinforces that MidOcean's interest in QCLNG is more akin to a passive financial investment, and does not put MidOcean in a position to establish coordinated conduct between QCLNG and APLNG.

[36] **Confidential to MidOcean Energy**.
[37] **Confidential to MidOcean Energy**.
[38] **Confidential to MidOcean Energy**.