

# Undertaking to the Australian Competition and Consumer Commission

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Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by MidOcean Energy Holdings Pty Ltd (ACN 662 741 415) and MidOcean Energy Parent Pty Ltd (ACN 666 688 786).

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## 1. Person giving the Undertaking

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This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by:

- (a) MidOcean Energy Holdings Pty Ltd ACN 662 741 415 (**MidOcean Energy**); and
- (b) MidOcean Energy Parent Pty Ltd ACN 666 688 786 (**MidOcean HoldCo**),  
(together referred to as the **MidOcean Parties** in this Undertaking).

## 2. Background

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### The parties to the Proposed Acquisition and Tokyo Gas Transaction

- 2.1. **MidOcean Energy, LLC, MidOcean Bidco and MidOcean Energy:** MidOcean Energy, LLC is an LNG company formed and managed by EIG Management Company LLC to build a diversified, resilient, cost and carbon competitive LNG portfolio. MidOcean Reef Bidco Pty Ltd (**MidOcean Bidco**) is currently a wholly owned subsidiary of MidOcean Energy, LLC that was established to acquire 100% of the ordinary shares in Origin Energy Limited (**Origin**) as part of the Proposed Acquisition. MidOcean Energy is currently a wholly owned subsidiary of MidOcean Energy, LLC that was established to acquire minority interests in the Gorgon, Pluto, Ichthys and Queensland Curtis LNG (**QCLNG**) projects from the Tokyo Gas Group.
- 2.2. **Brookfield LP:** Brookfield will invest in and control EOS Aggregator (Bermuda) L.P. (**Brookfield LP**) via the Brookfield Global Transition Fund (**BGTF**), Brookfield Renewable Partners L.P., and certain other Brookfield-managed co-investors. The Brookfield-managed portion of Brookfield LP is expected to be 67.6% on completion of the Proposed Acquisition. The balance of Brookfield LP is expected to be owned by Buckland Investment Pte. Ltd. (which is managed by GIC Special Investments Private Limited, which is in turn wholly owned by GIC Private Limited) (22.5%) and Davis Investments Pte. Ltd. (which is indirectly wholly owned by Temasek Holdings (Private) Limited) (9.9%).
- 2.3. **Origin:** Origin is an ASX listed integrated energy company. Origin has two core businesses, the Origin Energy Markets business responsible for electricity generation and electricity and gas retailing across Australia, and the Origin Integrated Gas Business which includes a 27.5% interest in Australia Pacific LNG. It also operates, or has interests in, a range of other businesses in future energy, non-energy or energy adjacent sectors.

### The application for merger authorisation

- 2.4. On 5 June 2023 Brookfield LP and MidOcean Bidco (collectively, the **Applicants**) lodged an application with the ACCC for merger authorisation (the **Application**).
- 2.5. The Applicants sought authorisation to engage in the conduct described in application MA1000024, being the proposed acquisition of Origin, comprising two interdependent acquisitions:
  - (a) **Scheme Acquisition:** It is proposed that MidOcean Bidco will acquire 100% of the ordinary shares in Origin pursuant to a scheme of arrangement under the Corporations Act (the **Scheme Acquisition**). To implement the Scheme Acquisition, a binding Scheme Implementation Deed (**SID**) was

signed on 27 March 2023 by Origin, MidOcean Bidco and Brookfield Renewable Group Australia Pty Ltd. The Scheme Acquisition is subject to various conditions precedent, as set out in the SID (see Annexure 5.1 of the Application), including FIRB approval, ACCC authorisation, Origin shareholder approval and Court approval, and

- (b) **On-Sale Acquisition:** Conditional upon, and as soon as possible following implementation of the Scheme Acquisition, MidOcean Bidco will procure that Origin and its interests are divided into two separate businesses, being the Origin Energy Markets business and the Origin Integrated Gas Business. Origin's Energy Markets business comprises Origin's energy retailing business, electricity generating assets, energy wholesale and trading business, development assets relating to energy production and storage, its investment in Octopus Energy and its LPG business and domestic gas trading business. Origin's Integrated Gas Business comprises Origin's upstream gas interests and shareholding in Australia Pacific LNG. The division of Origin will be implemented by MidOcean Bidco procuring the sale of the various Origin subsidiaries and assets comprising the Origin Energy Markets business to various entities wholly owned by Brookfield LP. MidOcean Bidco will retain 100% of the shares in Origin which, following completion of the sale of the Origin Energy Markets business, will own only the Origin Integrated Gas Business. The terms of Brookfield LP's acquisition of the Origin Energy Markets business are set out in the Commitment Deed (see Annexure 5.3 of the Application) and the steps that MidOcean Bidco and Brookfield LP will take to prepare for the implementation of the Scheme Acquisition and the On Sale Transaction are set out in the Bid Conduct Deed (see Annexure 5.2 of the Application).

The Scheme Acquisition and the On-Sale Acquisition are together the **Proposed Acquisition**.

- 2.6. MidOcean Energy also proposes to acquire minority interests in the Gorgon, Pluto, Ichthys and QCLNG projects from the Tokyo Gas Group pursuant to a binding sale and purchase agreement signed on 7 October 2022 by MidOcean Energy and Tokyo Gas. This transaction is not conditional upon, or related to, the Proposed Acquisition.
- 2.7. The Application was made pursuant to section 88(1) of the CCA. A merger authorisation provides protection from legal action under section 50 of the CCA, which otherwise prohibits acquisitions of shares or assets that would or would be likely to have the effect of substantially lessening competition in any market.
- 2.8. The Applicants sought authorisation of the Proposed Acquisition on their own behalf, and on behalf of the following classes of person:
- (a) any entity that is a related body corporate of Brookfield LP that acquires any part of the Origin Energy Markets business.
- (b) any entity that is a related body corporate of MidOcean Energy, LLC that acquires any part of the Origin Integrated Gas Business.
- 2.9. The Applicants requested that the ACCC grant a single authorisation under section 88(5) of the CCA of the two interdependent acquisitions which, taken together, form the Proposed Acquisition.
- 2.10. The objective of this Undertaking is to address the concerns about the Proposed Acquisition raised by the ACCC in its Reasons for Determination in respect of the Application.

### **3. Commencement of this Undertaking**

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This Undertaking comes into effect when:

- (a) this Undertaking is executed by the MidOcean Parties; and
- (b) this Undertaking so executed is accepted by the ACCC,

(the **Commencement Date**).

### **4. Cessation of Ongoing Obligation**

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#### **4.1. Withdrawal**

A MidOcean Party may request the withdrawal of this Undertaking pursuant to section 87B of the CCA at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

#### **4.2. Revocation**

The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading. Such a revocation must be express and in writing.

#### **4.3. Waiver**

The ACCC may, at any time, waive any of the obligations contained in this Undertaking. Such a waiver must be express and in writing.

#### **4.4. Extension**

The ACCC may, at any time, extend the date by which any of the obligations in this Undertaking is to be satisfied. Such an extension must be express and in writing.

### **5. Waiver of rights to Walloons East Coast Gas Sensitive Information**

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#### **5.1. Walloons East Coast Gas Sensitive Information**

For the purposes of this Undertaking, **Walloons East Coast Gas Sensitive Information** means each of the following:

- (a) marketing plans and strategies of Walloons to the extent it relates to East Coast Gas Customers;
- (b) the terms of each individual gas supply contract under which Walloons sells gas to an East Coast Gas Customer, and the terms being negotiated for proposed individual gas supply contracts of that nature; and
- (c) the price at which gas is sold by Walloons to an individual East Coast Gas Customer (but not weighted average prices calculated over a period of at least 1 month or aggregated revenue) or negotiations about prices for future gas supply of that nature.

## 5.2. Undertaking to Provide Waiver to QGC and Walloons

MidOcean Energy undertakes that it will:

- (a) on or before the Control Date, provide a written waiver in favour of QGC and Walloons that for the term of this Undertaking it waives any rights it may have under the QCLNG Arrangements to obtain Walloons East Coast Gas Sensitive Information; and
- (b) on the date it is provided, provide the ACCC with a copy of the waiver provided in favour of QGC and Walloons in satisfaction of clause 5.2(a).

## 5.3. Deletion and Destruction

If MidOcean Energy becomes aware that, after the Control Date, it has received Walloons East Coast Gas Sensitive Information from QGC or Walloons (**Disclosed Sensitive Information**), it must:

- (a) within 5 Business Days notify QGC or Walloons (as applicable) of the Disclosed Sensitive Information MidOcean Energy has become aware of having received;
- (b) as soon as practicable and in any instance within 5 Business Days return, delete or destroy all records of the Disclosed Sensitive Information in MidOcean Energy's control or possession (and where the information is stored in an automatic electronic backup system, impose reasonable information access restrictions to prevent such information being accessed by any employees of MidOcean Energy or its Related Bodies Corporate who have roles or responsibilities in connection with Australia Pacific LNG's marketing activities to East Coast Gas Customers); and
- (c) not use the Disclosed Sensitive Information for any purpose.

## 6. Self-reporting

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6.1. Within 10 Business Days of MidOcean Energy receiving Disclosed Sensitive Information, MidOcean Energy must provide the ACCC with written notice (**Self Report**) including:

- (a) confirmation that it received Disclosed Sensitive Information;
- (b) details of the MidOcean Energy employee(s) that received Disclosed Sensitive Information; and
- (c) details of steps taken by MidOcean Energy to comply with its obligations under clause 5.3 to:
  - (i) return, delete or otherwise destroy the Disclosed Sensitive Information as soon as practicable; and
  - (ii) notify Walloons that it has returned, deleted or destroyed (as applicable) the Disclosed Sensitive Information.

6.2. MidOcean Energy must comply with any direction of the ACCC in relation to matters arising from the Self Report within 10 Business Days after being so directed (or such other period as is agree in writing with the ACCC).

- 6.3. For the avoidance of doubt, it will not be a breach of this Undertaking if:
- (a) an employee of MidOcean Energy receives Walloons East Coast Gas Sensitive Information, provided that the MidOcean Energy complies with its obligations under clause 5.3 and clause 6.1(a);
  - (b) MidOcean Energy receives payments from Walloons for gas supplied to Walloons where the price is calculated by, among other things, reference to weighted average prices or aggregated revenue received from East Coast Gas Customers for the period relevant to the payment (typically a month);
  - (c) MidOcean Energy exercises a right to audit the calculation of payments from Walloons or receives an adjustment to its payments from Walloons for gas supplied to Walloons based on the outcome of such an audit, where the auditor (but not MidOcean Energy) has access to Walloons East Coast Gas Sensitive Information; or
  - (d) MidOcean Energy receives a document in which any Walloons East Coast Gas Sensitive Information has been redacted or individual East Coast Gas Customer pricing has been aggregated.

## **7. Notification of key dates and ACCC requests for information**

- 7.1. The MidOcean Parties must notify the ACCC in writing of:
- (a) the anticipated date of the Control Date, at least 5 Business Days before that date; and
  - (b) the occurrence of the Control Date, within 1 Business Day of that date.
- 7.2. The ACCC may direct the MidOcean Parties in respect of their compliance with this Undertaking to, and the MidOcean Parties must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
  - (b) produce documents and materials to the ACCC within the MidOcean Parties' custody, power or control in the time and in the form requested by the ACCC; and/or
  - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 7.3. Any direction made by the ACCC under clause 7.2 will be notified to the MidOcean Parties, in accordance with clause 13.213.2.
- 7.4. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 7 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 7.5. Nothing in this clause 7 requires the provision of information or documents in respect of which the MidOcean Parties have a claim of legal professional or other privilege.

## **8. Disclosure of this Undertaking**

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The MidOcean Parties acknowledge that the ACCC may:

- (a) make this Undertaking publicly available;
- (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
- (c) from time to time publicly refer to this Undertaking.

## **9. Obligation to procure**

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Where the performance of an obligation under this Undertaking requires a Related Body Corporate of the MidOcean Parties to take or refrain from taking some action, the MidOcean Parties will procure that Related Body Corporate to take or refrain from taking that action.

## **10. No Derogation**

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- 10.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by a MidOcean Party of any term of this Undertaking.
- 10.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the CCA for penalties or other remedies in the event that a MidOcean Party does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the CCA for penalties or other remedies.

## **11. Change of Control**

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In the event that a Change of Control is reasonably expected to occur, the MidOcean Parties must:

- (a) notify the ACCC of this expectation as soon as practicable; and
- (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on the MidOcean Parties pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified the MidOcean Parties in writing that a section 87B undertaking under this clause is not required.

## **12. Costs**

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- 12.1. The MidOcean Parties must pay all of its own costs incurred in relation to this Undertaking.



## 13. Notices

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### Giving Notices

- 13.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: [mergers@acc.gov.au](mailto:mergers@acc.gov.au)  
Attention: Executive General Manager  
Mergers, Exemptions & Digital Division

**With a copy sent to:**

Email address: [mergersru@acc.gov.au](mailto:mergersru@acc.gov.au)  
Attention: Director, Remedies Unit  
Policy, Coordination & Remedies Branch  
Mergers, Exemptions & Digital Division

- 13.2. Any notice or communication to the MidOcean Parties pursuant to this Undertaking must be sent to:

Name: [REDACTED]

Address: [REDACTED]

Email address: [REDACTED]

with a copy to: [REDACTED]

Phone number: [REDACTED]

Attention: [REDACTED]

**With a copy sent to:**

Name: [REDACTED]

Address: [REDACTED]

Email address: [REDACTED]

Phone number: [REDACTED]

Attention: [REDACTED]

- 13.3. If sent by post, notices are taken to be received 3 Business Days after posting (or 7 Business Days after posting if sent to or from a place outside Australia).

- 13.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

### **Change of contact details**

- 13.5. The MidOcean Parties must notify the ACCC of a change to its contact details within 3 Business Days.
- 13.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 13.3 and 13.4, will be taken to be received.

### **14. Defined terms and interpretation**

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#### **Definitions in the Dictionary**



- 14.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
  - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

#### **Interpretation**

- 14.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

Executed as an Undertaking

Executed by **MidOcean Energy Holdings Pty Ltd** (ACN 662 741 415) pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary
David Edgar	Benjamin Lee
Name of director (print)	Name of director/company secretary (print)
6 October 2023	6 October 2023
Date	Date

Executed by **MidOcean Energy Parent Pty Ltd** (ACN 666 688 786) pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary
David Edgar	Benjamin Lee
Name of director (print)	Name of director/company secretary (print)
6 October 2023	6 October 2023
Date	Date

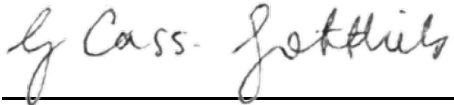
Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

10 October 2023

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Date

and signed on behalf of the Commission:



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Chair

10 October 2023

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Date

## Schedule 1 – Dictionary and interpretation

### 1. Dictionary

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**ACCC** means the Australian Competition and Consumer Commission.

**Application** has the meaning given to it in clause 2.4 of this Undertaking.

**BGTF** means the Brookfield Global Transition Fund.

**Brookfield LP** means Eos Aggregator (Bermuda) L.P.

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

**CCA** means the *Competition and Consumer Act 2010* (Cth).

**Change of Control** means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of MidOcean Energy's interest in QCLNG to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- (b) the sale or transfer of any assets necessary, or which may be necessary, to enable the MidOcean Parties to continue to comply with this Undertaking in its entirety.

**Commencement Date** has the meaning given to it in clause 3 of this Undertaking.

**Control Date** means the later of the date of completion of the Proposed Acquisition, or the date of completion of MidOcean Energy's acquisition of minority interests in the Gorgon, Pluto, Ichthys and QCLNG projects from the Tokyo Gas Group.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Disclosed Sensitive Information** has the meaning given in clause 5.3 of this Undertaking.

**East Coast Gas Customer** means a purchaser or potential purchaser of natural gas (which has not undergone liquefaction to produce LNG) at a delivery point connected to the pipeline network in Queensland, New South Wales, Victoria, Tasmania, South Australia or the Australian Capital Territory or Northern Territory.

**MidOcean BidCo** means MidOcean Reef Bidco Pty Ltd.

**MidOcean Energy** means MidOcean Energy Holdings Pty. Ltd.

**MidOcean HoldCo** means MidOcean Energy Parent Pty. Ltd.

**MidOcean Parties** has the meaning given to it in clause 1 of this Undertaking.

**On-Sale Acquisition** has the meaning given to it in clause 2.5(b) of this Undertaking.

**Origin** means Origin Energy Limited and its Related Bodies Corporate.

**Origin Energy Markets** means Origin Subsidiaries and assets that do not comprise the Origin Integrated Gas Business and that will not be owned by MidOcean BidCo following the Proposed Acquisition.

**Origin Integrated Gas Business** means the upstream gas assets of Origin that will be acquired by MidOcean BidCo pursuant to the Proposed Acquisition, and include the Origin interests in Australia Pacific LNG.

**Proposed Acquisition** has the meaning given to it in clause 2.5 of this Undertaking.


**Public Mergers Register** means the ACCC's public register of merger clearances, available at [www.accc.gov.au](http://www.accc.gov.au).

**Public Section 87B Undertakings Register** means the ACCC's public register of section 87B undertakings, available at [www.accc.gov.au](http://www.accc.gov.au).

**QCLNG** means the Queensland Curtis LNG project.

**QGC** means QGC Pty Limited (currently a wholly owned subsidiary of Shell), the operator of the QCLNG.

**QCLNG Arrangements** means:

- (a) 
- (b) gas sales agreements under which participants in QCLNG sell gas to Walloons; and
- (c) joint operating agreements under which participants in QCLNG own petroleum tenements and produce gas for liquefaction and export and/or sales to East Coast Gas Customers.

**Reasons for Determination** means the ACCC's reasons for determination in respect of the Application.

**Related Bodies Corporate** has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

**Scheme Acquisition** has the meaning given to it in clause 2.5(a) of this Undertaking.

**Self Report** has the meaning given to it in clause 6.1 of this Undertaking.

**Undertaking** is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the CCA.

**Walloons** means Walloons Coal Seam Gas Pty Ltd, 75% owned by QGC.

**Walloons East Coast Gas Sensitive Information** has the meaning given to it in clause 5.1 of this Undertaking.

## 2. Interpretation

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In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;

- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
  - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
  - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:



- (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
- (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, the MidOcean Parties will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
  - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (ii) a party includes its successors and permitted assigns; and
  - (iii) a monetary amount is in Australian dollars.