



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Brookfield LP and MidOcean authorisation application (MA100024) for proposed acquisition of Origin Energy Limited

This document contains the summary of the ACCC's reasons for its determination of 10 October 2023. The ACCC's reasons pursuant to section 90(4) of the Act are contained in a separate document. This summary accompanying the determination is not intended as a substitute for the ACCC's reasons provided pursuant to section 90(4).

Executive summary

EOS Aggregator (Bermuda) LP (**Brookfield LP**) and MidOcean Reef BidCo Pty Ltd (**MidOcean**), collectively, the **Applicants** have applied for authorisation for:

- MidOcean to acquire 100% of the ordinary shares in Origin Energy Limited (**Origin**); and
- MidOcean to divide Origin into the Origin Integrated Gas business and the Origin Energy Markets business. MidOcean will retain the Origin Integrated Gas business (**Origin Integrated Gas**), while Brookfield LP will acquire the Origin Energy Markets business (**Origin Energy Markets**).

(together, the **Proposed Acquisition**).

The Australian Competition and Consumer Commission (**ACCC**) has decided, pursuant to section 88(1) of the Competition and Consumer Act 2010 (Cth) (**the Act**), to authorise the Proposed Acquisition on the conditions, pursuant to section 88(4) of the Act, that:

- Brookfield LP, Brookfield Asset Management ULC and Brookfield Investment Management Australia Pty Ltd (ACN 662 118 489) and Brookfield Corporation (the **Brookfield Parties**) must give, and comply with, the section 87B undertaking in the form at Attachment A (the **Brookfield Undertaking**)
- AusNet Pty Ltd (ACN 603 317 559) and Australian Energy Holdings No 1 Pty Ltd (ACN 654 672 670) (the **AusNet Parties**) must give, and comply with, the section 87B undertaking in the form at Attachment B (the **AusNet Undertaking**), and
- MidOcean Energy Holdings Pty Ltd (ACN 662 741 415) and MidOcean Energy Parent Pty Ltd (ACN 666 688 786) (the **MidOcean Parties**) must give, and comply with, the section 87B undertaking in the form at Attachment C (the **MidOcean Undertaking**).

The ACCC is not satisfied in all the circumstances that the Proposed Acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition, primarily due to the competitive effects of vertical integration between electricity transmission and generation businesses, and other forms of vertical integration involving electricity distribution or smart meters.

However, the ACCC considers that the Proposed Acquisition will likely result in:

- an acceleration of renewable generation and storage development for Origin Energy Markets
- additional renewable generation and storage development for Origin Energy Markets; and
- a decrease in Origin Energy Markets' emission intensity.

The ACCC also considers that the Proposed Acquisition would result, or be likely to result in, an acceleration of renewable generation and storage build-out in Australia, and that this constitutes a public benefit.

The ACCC considers these benefits will result in a reduction of greenhouse gas emissions in Australia relative to the future without the Proposed Acquisition, which constitutes a material public benefit, in the sense that it is important and of value to Australians. Taking into account the conditions specified in the authorisation, the ACCC is satisfied in all the circumstances that the Proposed Acquisition would result, or be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Acquisition.

The test

Before the ACCC can grant authorisation, the ACCC must be satisfied, in all the circumstances, that the proposed conduct:

- would not have the effect, or be likely to have the effect, of substantially lessening competition (the **Competition Test**); or
- would result, or be likely to result, in a benefit to the public that would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Acquisition (the **Public Benefit Test**).

The task before the ACCC in weighing the public benefits and public detriments in this matter is finely balanced. It involves weighing the anti-competitive effects the ACCC considers likely to result from the Proposed Acquisition, which may harm both consumers and the economic efficiency of energy markets, against likely environmental benefits to the public from increasing the speed and extent of Origin's transition to renewable energy sources, and Australia's accelerated decarbonisation.

Competition assessment

In this Summary of Reasons for Determination, the term Brookfield refers to Brookfield Corporation, Brookfield Asset Management ULC and their affiliates.

Brookfield is a large asset manager with investments across five broad categories. The Proposed Acquisition will result in Brookfield LP owning Origin's retail electricity and gas business, and its electricity generation business. Brookfield LP is a limited partnership with the majority interests being controlled by Brookfield within Brookfield's Renewable Power & Transition business unit.

Brookfield, as part of its Infrastructure business unit, has a 45.4% interest in AusNet, which owns the vast majority of the electricity transmission network in Victoria, one of five electricity distribution networks in Victoria, and one of three gas distribution networks in Victoria. In addition, Brookfield's Infrastructure business unit (through related entities) holds a 50% interest in Intellihub, a smart metering company.

Brookfield actively manages AusNet and its Intellihub stake. It also intends to actively manage the Origin Energy Markets business.

MidOcean Energy, LLC is a new liquified natural gas (**LNG**) company formed by EIG Partners, an institutional investor in the energy sector, to build an LNG portfolio. MidOcean will acquire Origin's upstream gas interests, including its interest in Australia Pacific LNG (**APLNG**).¹ MidOcean Energy Holdings Pty Ltd, in a separate transaction, is also due to acquire a small interest in Queensland Curtis LNG (**QCLNG**). MidOcean and MidOcean Energy Holdings Pty Ltd are wholly owned subsidiaries of MidOcean Energy, LLC.

The Proposed Acquisition will therefore result in vertical links between Origin and AusNet, and between Origin and Intellihub. It will also result in horizontal overlap between upstream gas businesses through the MidOcean Energy LLC and its subsidiaries (**MidOcean Group**)'s interests.

A key issue for the ACCC, given the vertical links the Proposed Acquisition creates, is whether Brookfield has the ability and incentive to use its position in monopoly infrastructure to anti-competitively foreclose rivals in another market.²

The ACCC is concerned that the vertical integration of the monopoly transmission network in Victoria with Origin's electricity generation business will lead to anti-competitive behaviour by AusNet in favour of Origin. The ACCC is primarily concerned that due to their common control, AusNet may discriminate in favour of Origin in connecting new generators to the Victorian transmission network or in the way that it operates the transmission network.

However, there are factors that may limit, but not eliminate, the anti-competitive impact of the vertical integration, such as:

- the roles of AEMO as the National Electricity Market (**NEM**) and system operator and as the Victorian transmission network planner
- economic regulation and enforcement of ring-fencing rules by the AER
- the role of minority investors in the relevant entities
- the degree of separation between the Brookfield funds making the investments; and
- the s87B undertakings which are a condition of authorisation.

The ACCC considers that, in combination, the mitigating factors will make it less likely that there will be discrimination in favour of Origin by AusNet of a kind that would be easy to detect. However, the ACCC considers there is a real prospect of subtle and difficult to detect discrimination. The regulatory frameworks (including the applicable ring-fencing guidelines and rules) do not in themselves sufficiently counter the risk of foreclosure of Origin's rivals. Having separate funds is not in itself likely to address the concern, given incentives within Brookfield teams to have regard to the overall portfolio. The role of minority investors will not likely act to constrain foreclosure strategies that have minimal impact on the profitability of AusNet or are difficult to detect. The undertakings accepted by the ACCC (discussed further below) are behavioural in nature, and although they assist, do not completely remove the potential for foreclosure.

The ACCC is concerned that even subtle discrimination such as applying connection criteria more stringently to a competing connection applicant has the potential to have a significant anti-competitive effect.

¹ APLNG is one of three LNG projects in Queensland that produce and sell LNG for export as well as supplying gas to the eastern states. QCLNG and Gladstone LNG (GLNG) are the other two LNG projects.

² ACCC, [Merger Guidelines](#), November 2008 (amended November 2017), at p. 25.

In summary, due to vertical integration between electricity transmission and generation, the ACCC is not satisfied in all the circumstances that the Proposed Acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition in the markets for the:

- wholesale physical supply of electricity in the Victorian region of the NEM or the NEM more broadly
- supply of hedging instruments to electricity retailers operating in the Victorian region of the NEM
- supply of new renewable and firming generation and storage services in response to government policy incentives and private demand in Victoria.

The ACCC is also concerned about vertical integration between AusNet's electricity distribution business and Origin, which is likely to impact competition in retailing, and vertical integration between Intellihub and Origin, which is likely to impact competition in smart-meter and behind the meter services. However, while the ACCC is similarly not satisfied on these issues, the ACCC considers that the competition impacts are less significant compared to the issues arising in relation to vertical integration of electricity transmission and generation.

The ACCC is also concerned about horizontal competition effects due to MidOcean Group's ownership interests in both QCLNG and APLNG, which may impact competition in the wholesale gas market in the eastern states.

The s87B undertakings which are a condition of authorisation are relevant to the assessment of the above competition issues.

The ACCC is satisfied that the Proposed Acquisition would not have the likely effect of substantial lessening of competition as a result of vertical integration between gas distribution and gas retailing, and the vertical integration between embedded generation and electricity distribution.

Public detriment

In assessing the public detriments, the ACCC has had regard to all competitive harms likely to result from the Proposed Acquisition, notwithstanding its conclusions in respect of the Competition Test.

The ACCC considers that the vertical integration discussed above, across regulated monopoly assets and contestable markets, would give rise to material competition harms, at a time when there is increased change in the nature of energy markets, and increasing pressure for the connection of new generation to the transmission network. This vertical integration therefore raises the possibility for long-term competitive harm.

As noted above, the ACCC has also considered the horizontal competition issues arising in overlapping interests in LNG facilities, and the associated effects on competition, as a public detriment likely to result from the Proposed Acquisition.

Public benefits

The ACCC considers that the Proposed Acquisition would result, or be likely to result, in:

- an acceleration of renewable generation and storage development for Origin Energy Markets
- additional renewable generation and storage development for Origin Energy Markets; and

- a decrease in Origin Energy Markets' emissions intensity.

The ACCC considers that these constitute material public benefits, in the sense that they are important and of value, both to Origin's customers and to Australians more broadly. The ACCC also considers that the Proposed Acquisition would result, or be likely to result in, an acceleration of renewable generation and storage build-out in Australia more generally, and that this constitutes a public benefit.

The ACCC considers these benefits will result in an acceleration of the reduction of greenhouse gas emissions in Australia relative to the future without the Proposed Acquisition.

Reducing greenhouse gas emissions is critical to achieving the less extreme warming contemplated under projected climate change scenarios and to reducing the severity of the impacts of climate change on Australia and other countries. Origin is a significant emitter of greenhouse gases and its large retail base supports hedging with a large number of high-emission generators. The ACCC considers that the Proposed Acquisition will help Australia to mitigate its contribution to climate change and assist it in meeting or exceeding national emissions reduction targets, which will contribute to supporting a global transition to lower emissions.

The ACCC accepts that Brookfield will likely deliver a faster and more comprehensive transition of Origin to renewable energy sources, than would occur absent the Proposed Acquisition. The ACCC considers that the nature of the Brookfield Global Transition Fund and Brookfield's financial, reputational and commercial incentives, in combination with its global renewables expertise and procurement scale advantage, will enable it to increase the speed of the build-out, and favour a completed build-out. In particular:

- while Brookfield (and individuals responsible for managing the Brookfield Global Transition Fund) is primarily motivated by financial returns, there is an alignment of the achievement of financial returns and the completion of the build-out, as underpinned by its modelling
- an express purpose of the Brookfield Global Transition Fund is investment in renewable energy projects and decarbonisation, and investors have joined the fund on this basis
- internal governance arrangements require Brookfield to regularly measure and report against specific 'impact targets' for its renewables build-out and Paris-aligned emissions reduction targets
- a failure to complete the build-out may impact Brookfield's ability to attract investors and raise capital for future funds.

The ACCC considers that Brookfield's build-out plans will be supported by access to Origin's retail base and existing generation firming capacity. The ACCC accepts that as a publicly listed company, Origin faces challenges in leveraging these assets in its own renewable generation and storage development relative to Brookfield.

The access to a retail base can contribute to accelerating the build-out of renewable generation and storage assets, because it removes the need to negotiate offtake agreements which can take considerable time and increase project costs, particularly in relation to long-term financing.

The ACCC considers that Brookfield is well-placed to invest in renewables, due to its capital structure; that the Brookfield Global Transition Fund is not required to pay dividends throughout the fund's life; and that it has capital ready to deploy. Further, the ACCC

considers Brookfield may be able to reduce its risks by pursuing multiple projects simultaneously, with the expectation that at least some will come to fruition. This is likely to increase the speed by which Brookfield can complete the build-out.

Brookfield's global renewables expertise and procurement scale advantage may enable it to increase the speed of the build-out. In particular, Brookfield will benefit from centralised procurement capabilities, including access to a wider range of supply chains, and group-level negotiations with suppliers. Brookfield will also benefit from its global renewables expertise, including its experience in developing grid-scale wind generation and storage assets.

The ACCC acknowledges the various factors that may act to delay Brookfield's renewables build-out. In particular, the ACCC considers that limits in the transmission system may make a rapid build-out difficult. However, these factors would also be likely to delay other renewables developers including Origin under its current ownership structure. The ACCC considers that regardless of these factors, the Proposed Acquisition is likely to result in an accelerated and additional renewables build-out by Origin compared to the case where the Proposed Acquisition does not go ahead.

In coming to this conclusion, the ACCC has taken into account that without the Proposed Acquisition, both Brookfield and Origin would likely still invest in renewable generation, and that it is only the "extra" investment, arising as a result of the Proposed Acquisition, that the ACCC has placed weight on as a public benefit.

In relation to the overall impact on Australian renewable investment, the ACCC recognises that there may be a degree of "crowding out" (that is, investment by Brookfield may displace some investment by others that would have occurred without the transaction) but still considers that the Proposed Acquisition will result an accelerated build-out overall of renewables in Australia.

The ACCC considers the Proposed Acquisition will lessen absolute emissions for Australia as a whole, by bringing forward renewable generation investment, which will displace fossil-fuel generation earlier. However, the ACCC recognises that in the much longer-term a similar amount of renewable and storage capacity may ultimately be built in the future with or without the Proposed Acquisition.

The ACCC has not reached a concluded view on whether or not Origin's own absolute emissions from generation will reduce with the Proposed Acquisition. In light of the energy security concerns being considered by the NSW government and the impacts this may have on the timing of the closure of Eraring, the ACCC has not concluded Eraring will likely close earlier due to the Proposed Acquisition. As Eraring represents Origin's main contribution to emissions, the timing of Eraring's closure is material to considering Origin's absolute emissions under the Proposed Acquisition.

However, the ACCC considers that Origin's generation portfolio's average emissions intensity will reduce earlier due to the Proposed Acquisition, as its generation portfolio will have a higher percentage of renewables than without the Proposed Acquisition. Further, the emissions associated with supplying Origin's significant retail load will be reduced, as there will be an earlier reduction in the emissions intensity of NEM generation overall due to the Proposed Acquisition likely bringing forward renewable generation development.

The ACCC does not consider that the other public benefits that the Applicants claimed would result, or would be likely to result from the Proposed Acquisition, including: decreased energy prices or volatility in prices; the earlier and cheaper development and delivery of new technologies in Australia; the development of the Australian renewables industry in the form of local supply chains and on-shore manufacturing; increased direct and indirect employment; and the acceleration of behind the meter solutions.

Undertakings

The ACCC has granted authorisation on the conditions, pursuant to section 88(4), that:

- the Brookfield Parties must give, and comply with, the Brookfield Undertaking;
- the AusNet Parties must give, and comply with, the AusNet Undertaking; and
- the MidOcean Parties must give, and comply with, the MidOcean Undertaking.

The ACCC considers that the Brookfield Undertaking, the AusNet Undertaking and the MidOcean Undertaking will do one or more of reducing the likelihood of some public detriment, and increasing the likelihood of some public benefit, resulting from the Proposed Acquisition.

The Brookfield Undertaking and the AusNet Undertaking include a range of separation and ring-fencing measures within Brookfield and between Brookfield, AusNet and Origin. As part of this separation, there will be two groups of Brookfield personnel that will manage Brookfield's interest in one of Ausnet or Origin and have no involvement in the other. A member of one group may not become a member of the other, and there are restrictions between the groups including in respect of communication and physical work areas. The Brookfield and Ausnet Undertakings also provide for independent auditing, with public versions of reports, of Brookfield and AusNet's compliance with their respective undertakings. For AusNet, this includes auditing of compliance with the non-discrimination obligations of the AER's Transmission Ring-Fencing Guideline as relating to vertical integration with Origin, and extension of this audit to negotiated transmission services. Brookfield and AusNet must publish a range of material, including the aforementioned public audit reports and key details of any Origin applications to connect to the AusNet transmission network.

The Brookfield Undertaking also provides for other commitments that are intended to reduce the likelihood of detriments, including that Brookfield will be prevented from selling AusNet and Origin in the future in a way that a single corporate group or its related/connected entities or parties hold an economic interest greater than 10% in both, and to protect from Intellihub sharing confidential information of an electricity retailer or its other customers.

These commitments are intended to reduce the likelihood of Brookfield or AusNet engaging in certain conduct that would favour Origin or otherwise disfavour Origin's rivals.

The MidOcean Undertaking contains a commitment by MidOcean Energy Holdings Pty Ltd to waive its rights to receive certain sensitive information relating to QCLNG. It also requires MidOcean Energy Holdings Pty Ltd to delete or destroy any such information if it is received by MidOcean Energy Holdings Pty Ltd. The ACCC considers that this undertaking will reduce the ability of MidOcean Group to facilitate coordinated conduct between APLNG and QCLNG, thereby reducing the likelihood of some public detriments occurring if the Proposed Acquisition proceeds.

The Brookfield Undertaking also requires Brookfield to publish annual reports on the progress of Origin in meeting the objectives of the proposed renewables build-out, and records Brookfield's commitment to these objectives. The ACCC considers this will increase the likelihood of Brookfield completing a higher proportion of the full proposed build-out and progress towards delivering up to 14 GW of renewable generation and storage, thereby increasing the likelihood of some public benefits occurring if the Proposed Acquisition proceeds.

Weighing of benefits and detriments

Acknowledging the inherent difficulty in weighing competitive harm against public benefits, the ACCC has made the evaluative judgment applied by the Tribunal and the Court in analogous cases.³

The ACCC considers that the Proposed Acquisition is likely to result in competitive detriments of varying scale and likelihood. The ACCC's concerns derive, in the main, from the vertical integration arising from Brookfield's interests in both AusNet and Origin. The principal competitive detriment arising is in connection to vertical integration of electricity generation and transmission, which detriment the ACCC considers to be material. Accordingly, the ACCC places considerable weight on this detriment.

The other detriments identified by the ACCC are less likely to occur, would be of lesser effect or both, such that the ACCC has placed less weight on them.

The ACCC considers that the likelihood of the identified detriments, including the principal detriment in electricity generation and transmission, is mitigated to some extent by the proffered undertakings.

Against this, the ACCC is required to weigh the public benefits likely to result from the Proposed Acquisition. The ACCC considers there are material public benefits likely to result from the Proposed Acquisition in the form of accelerated and additional renewables development for Origin, leading to a reduction in emissions intensity. The ACCC considers these public benefits to be highly valuable and important to Australians in the context of the need to reduce greenhouse gas emissions to assist in global efforts to avoid the most severe impacts of climate change. Accordingly, the ACCC has given significant weight to these public benefits.

The ACCC considers the Proposed Acquisition is likely to result in an acceleration of renewable generation and storage build-out for Australia as a whole, and this constitutes a public benefit.

The ACCC considers that the Brookfield Undertaking increases the likelihood of these benefits materialising.

Conclusion

Accordingly, as outlined in the Reasons for Determination below, the ACCC is satisfied in all the circumstances that, on the conditions that:

- the Brookfield Parties must give, and comply with, the Brookfield Undertaking,
- the AusNet Parties must give, and comply with, the AusNet Undertaking, and
- the MidOcean Parties must give, and comply with, the MidOcean Undertaking,

the Proposed Acquisition would result, or be likely to result, in a benefit to the public, and the benefit would outweigh the detriment to the public that would result, or be likely to result, from the Proposed Acquisition.

³ *ACCC v Australian Competition Tribunal* (2017) 254 FCR 341, at [7]; *ACCC v Pacific National (No 2)* [2019] FCA 669, at [1276].