

**DETERMINATION OF MERGER
NOTIFICATION M/18/036 -**

ENVA/RILTA

Dated 20 December 2018



1. INTRODUCTION

Introduction

- 1.1 On 4 May 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby Exponent Private Equity LLP (“Exponent”), through Enva Irish Opco Limited, would acquire sole control of (i) Richardstown Investments Limited, (ii) Grangerath Investments Limited and (iii) Noah Investments Limited (the “Target Companies”) and their subsidiaries including Rilta Environmental Limited (“Rilta”) and its subsidiaries: (i) ClearCircle Environmental (NI) Limited; (ii) Soils Environmental Services Unlimited Company; (iii) Returnbatt Unlimited Company; and (iv) Cullen Environmental Services Limited (collectively, the “Rilta Group”) (the “Proposed Transaction”).

The Proposed Transaction

- 1.2 The Proposed Transaction is to be implemented pursuant to a share purchase agreement dated 2 May 2018 between Enva Irish Opco Limited, [...],¹ [...] ² and [...] ³ (the “Sellers”) (the “SPA”).
- 1.3 Greenogue Investments Limited (“Greenogue”), a subsidiary of the Target Companies, currently owns 75% of the issued share capital of Rilta, while One51 Holdings Limited (“One51”) owns the remaining 25% of Rilta. Immediately prior to completion of the Proposed Transaction, Greenogue proposes to acquire One51’s 25% shareholding in Rilta through a put and call option agreement entered into between Greenogue and One51.
- 1.4 Following completion of the Proposed Transaction, Exponent, through Enva Irish Opco Limited, will acquire sole control of the Target Companies and their subsidiaries, including Greenogue, Rilta and Rilta’s subsidiaries.

The Undertakings Involved

The Acquirer - Exponent

- 1.5 Enva Irish Opco Limited is directly owned by Exponent Private Equity Partners III LP, which is ultimately owned and controlled by Exponent. Exponent is a limited liability partnership established in England and Wales that makes private equity investments in businesses across a range of industry sectors.
- 1.6 Exponent has informed the Commission that it currently controls the following portfolio companies which generate revenue in the State:

¹ [...] owns 100% of the issued share capital of Richardstown Investments Limited.

² [...] owns 100% of the issued share capital of Grangerath Investments Limited.

³ [...] owns 100% of the issued share capital of Noah Investments Limited.



Portfolio Company Name	Business Activities In the State
BBI Diagnostics Group Limited	Supplier of products and services to customers in the diagnostic, healthcare, research, food and cosmetics sectors.
Wowcher Limited	Provider of online discount deals.
HSS Hire Group plc	Tool hire business.
Loch Lomond Holdings Limited	Producer of whisky, vodka and gin.
Group GTI Limited	Graduate recruitment business.
Racing Post	Newspaper publisher of data, opinion and analysis on racing and other sports.
Photobox	Provider of digital consumer services for personalised products.
The Leisure Pass Ireland Limited	Provider of sightseeing city card passes.
The Enva Group	Waste management, recycling and resource recovery business.
Evergreen	Manufacturer and distributor of lawn and garden care products.
SHL Limited	Provider of talent assessment products and services.
Bullitt Group	Provider of mobile phones.

1.7 As indicated in the table above, Exponent ultimately owns and controls the Enva Group (“Enva”). Enva, which comprises Enva Ireland Limited, Enva Northern Ireland Limited and Enva Organics Limited, provides hazardous and non-hazardous waste services to business customers in the State and Northern Ireland. Enva operates the following divisions:

- **Field Services** offers customers on-site tank cleaning and decommissioning services, interceptor and bund wall cleaning, and an emergency spillage response service;
- **Hazardous Waste** collects chemical waste from customers, some of which is treated by Enva and some of which is bundled and exported;
- **Industrial & Automotive** collects waste from industrial and automotive customers, the majority of which is exported to third party processors in Europe for treatment;



- **Organic & Land Services** collects organic materials from waste water treatment plants, principally from Irish Water Limited (“Irish Water”);
 - **Soil Treatment** collects contaminated soils, some of which is treated by Enva and some of which is exported for treatment;
 - **Waste Oil** collects waste oil and oily water, both of which are treated by Enva with the oil recovered and sold as re-processed fuel oil; and
 - **Water Treatment** supplies chemicals for water treatment plants, conducts water surveys for Irish Water and provides an accredited laboratory service for diagnosing operational issues at water and effluent treatment plants.
- 1.8 Enva operates a number of facilities, licensed by the Environmental Protection Agency (“EPA”) in the State at a number of locations, including:
- Raffeen Industrial Estate, Ringaskiddy Road, Monkstown, Co. Cork;
 - JFK Industrial Estate, John F Kennedy Road, Naas Road, Dublin 12;
 - Smithstown Industrial Estate, Shannon, Co. Clare; and
 - Clonminam Industrial Estate, Portlaoise, Co. Laois.
- 1.9 Enva operates two waste facilities in Northern Ireland licensed by the Northern Ireland Environment Agency.
- 1.10 For the financial year 2016/2017, Exponent’s worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

The Target - Rilta

- 1.11 The Rilta Group provides a range of hazardous and non-hazardous waste services in the State and in Northern Ireland across the following divisions:
- **Asbestos Disposal** provides a range of asbestos waste management services, including packaging and disposal;
 - **Battery Recycling** collects lead acid batteries for export;
 - **Contaminated Soils** collects contaminated soil and dredging spoil, some of which is exported;
 - **Hazardous Waste Management/Brokerage** collects multiple hazardous waste streams (e.g., paints, laboratory waste, detergents, acids and bases), all of which are exported for treatment;
 - **Industrial Tanker Services** provides on-site tank, drainage and forecourt cleaning services;



- **Liquid Waste Treatment** operates a treatment facility for contaminated aqueous waste, sludge and leachates;
 - **Packaging and Recycling** operates a bulk packaging disposal service and the reconditioning or disposal of used drums;
 - **Transformer Decommissioning** collects and processes end-of-life or damaged transformers for further recycling, recovery or disposal;
 - **Waste Oil Reprocessing** collects and processes waste oil for sale as re-processed fuel oil;
 - **Glass Recycling** operates a glass bottle processing facility in Northern Ireland; and
 - **Waste Refrigeration Recycling** operates a waste refrigeration recycling facility in Northern Ireland.
- 1.12 In the State, the Rilta Group operates two EPA-licensed facilities in Greenogue Business Park, Rathcoole, Co. Dublin.
- 1.13 The Rilta Group is active in Northern Ireland through Rilta's wholly owned subsidiary ClearCircle Environmental (NI) Limited which operates two waste facilities in Co. Antrim and Co. Derry.
- 1.14 For the financial year ending 31 December 2016, the Rilta Group's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

Rationale for the Proposed Transaction

- 1.15 The parties state the following in the notification:

"The Proposed Transaction is to enable Enva improve its position in the Irish waste market. Specifically, the Proposed Transaction will enable the merged entity to provide its customers better services while also facilitating greater competition with [...]."

Preliminary Investigation ("Phase 1")

Contacts with the Undertakings Involved

- 1.16 On 4 May 2018, in addition to the notification, an economic report by Professor Francis O'Toole of Trinity College Dublin, commissioned on behalf of the parties, was submitted to the Commission ("The O'Toole Report #1").
- 1.17 On 14 June 2018, the Commission served a Requirement for Further Information (the "Phase 1 RFI") on Exponent, Richardstown Investments Limited, Grangerath Investments Limited and Noah Investments Limited, pursuant to section 20(2) of the



Act. This adjusted the deadline within which the Commission was required to conclude its assessment of the Proposed Transaction in Phase 1.

- 1.18 Upon receipt of all of the responses to the Phase 1 RFI, the “appropriate date” (within the meaning of section 19(6)(b)(i) of the Act) became 3 August 2018.⁴
- 1.19 During the Phase 1 investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties.

Third Party Submissions

- 1.20 During the Phase 1 investigation, the Commission received a number of third party submissions that expressed competition concerns about the likely competitive impact of the Proposed Transaction in a number of potential markets for goods or services in the State. These concerns are assessed by the Commission as part of its review of the likely competitive impact of the Proposed Transaction in a number of potential markets for goods or services in the State.

Market Enquiries

- 1.21 During the Phase 1 investigation, the Commission circulated questionnaires to various third parties, including customers and competitors of Enva and the Rilta Group.
- 1.22 The Commission received a response from many of the third parties to whom it sent a questionnaire and, in most cases, the Commission also contacted those third parties by telephone and/or e-mail to seek further details regarding their responses.

Phase 1 Proposals

- 1.23 During the Phase 1 investigation, the Commission identified potential competition concerns in relation to the Proposed Transaction. On 7 September 2018, the notifying parties submitted proposals to the Commission in accordance with section 20(3) of the Act with a view to ameliorating the potential competition concerns identified by the Commission. The submission of these proposals by the notifying parties extended the deadline within which the Commission was required to conclude its assessment of the competitive effects of the Proposed Transaction in Phase 1 by 15 working days to 45 working days in accordance with section 21(4) of the Act.
- 1.24 During the Phase 1 investigation, the Commission engaged with the notifying parties and their legal advisors to discuss whether the proposals submitted by the notifying parties would ameliorate the potential competition concerns identified by the Commission. Following detailed consideration, the Commission was unable to reach a conclusion that the proposals submitted by the notifying parties would ameliorate the potential competition concerns identified by the Commission.

Phase 1 Determination

⁴ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.



- 1.25 Having considered all the available information in its possession at the time, the Commission was unable to form the view at the conclusion of the Phase 1 investigation that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.
- 1.26 On 4 October 2018, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

Full Investigation (“Phase 2”)

Third Party Submissions

- 1.27 One third party submission was received by the Commission during the Phase 2 investigation. The competition concerns expressed in this submission were assessed by the Commission as part of its review of the likely competitive impact of the Proposed Transaction in a number of potential markets for goods or services in the State.

Contacts with Customers, Competitors and other Third Parties

- 1.28 During the Phase 2 investigation, the Commission continued the process, initiated during Phase 1, of seeking the views of customers and competitors of Enva and the Rilta Group.
- 1.29 The Commission also engaged the services of Dr. Paul K. Gorecki, an independent external economist, to review the information provided to the Commission by the notifying parties and to provide expert advice on the likely competitive impact of the Proposed Transaction in a number of potential markets for goods or services in the State.

Contacts with the Undertakings Involved

- 1.30 On 24 October 2018, the Commission served an RFI (the “Phase 2 RFI”) on Exponent, Richardstown Investments Limited, Grangerath Investments Limited and Noah Investments Limited, pursuant to sections 20(2) and 22(4A) of the Act. This adjusted the deadline within which the Commission is required to conclude its assessment of the Proposed Transaction in Phase 2. Exponent, Richardstown Investments Limited, Grangerath Investments Limited and Noah Investments Limited complied with the Phase 2 RFI on 16 November 2018.
- 1.31 On 22 October 2018, the notifying parties made a submission to the Commission concerning the following two areas of overlap in the State: (a) the collection and treatment of oily tank and interceptor hazardous waste, and (b) the collection and treatment of hazardous waste lubricant oil. Another submission was made to the Commission by the notifying parties on 29 November 2018 in relation to these two areas of overlap. On 29 November 2018, a second economic report by Professor Francis O’Toole of Trinity College Dublin, commissioned on behalf of the notifying parties, was also submitted to the Commission (“The O’Toole Report #2”).



- 1.32 During the Phase 2 investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties.



2. INDUSTRY BACKGROUND – HAZARDOUS WASTE SECTOR IN THE STATE

- 2.1 The Proposed Transaction takes place in the non-hazardous and hazardous waste management sector in the State. However, most of the horizontal overlap between the notifying parties occurs in the hazardous waste sector in the State.
- 2.2 Waste is classified as being hazardous when it displays one or more of the hazardous properties listed in the second schedule of the Waste Management Act, 1996 as amended (e.g., explosive, oxidising, flammable, irritant, harmful, toxic, carcinogenic, etc.). Since 1 June 2015, waste classification is based on the European Commission’s decision of 18 December 2014 (2014/955/EEC) and European Commission Regulation (EU) No 1357/2014 of 18 December 2014.⁵
- 2.3 In the State, the largest quantity of hazardous waste is generated by industry and includes such waste materials as industrial solvents, waste oils, industrial sludges and chemical wastes. Households, small businesses, farms and the healthcare and construction sectors also generate hazardous waste, including batteries, electrical equipment, and solvent-based paint and varnish waste.
- 2.4 The treatment of hazardous waste in the State is carried out either on-site at the facility where the waste is generated (under the relevant conditions of a licence granted by the Environmental Protection Agency (“EPA”)) or offsite at licenced waste treatment facilities. Approximately half of the total hazardous waste generated in the State is exported for treatment. The other half is treated onsite or transferred offsite for disposal or recovery within the State. The top four types of hazardous waste treated at waste facilities in the State are as follows: oils/water emulsion sludges (19.2%); used oils (17.9%); spent solvents (16.3%); and human infectious health care wastes (10.7%).⁶
- 2.5 The export of hazardous waste is subject to a European Union-wide control system founded on EU Regulation 1013/2006 on Shipments of Waste and the Waste Management (Shipments of Waste) Regulations SI 419/2007. Restrictions apply primarily to the shipment of hazardous waste for disposal while hazardous waste exported for recovery is subject to an open waste market in the European Union (not being subject to the proximity principle⁷). The United Kingdom accepts hazardous waste from the State for both high temperature incineration and disposal due to the State’s deficit in hazardous waste treatment infrastructure.⁸

⁵ This waste classification system applies across the European Union and is the basis for all national and international waste reporting obligations.

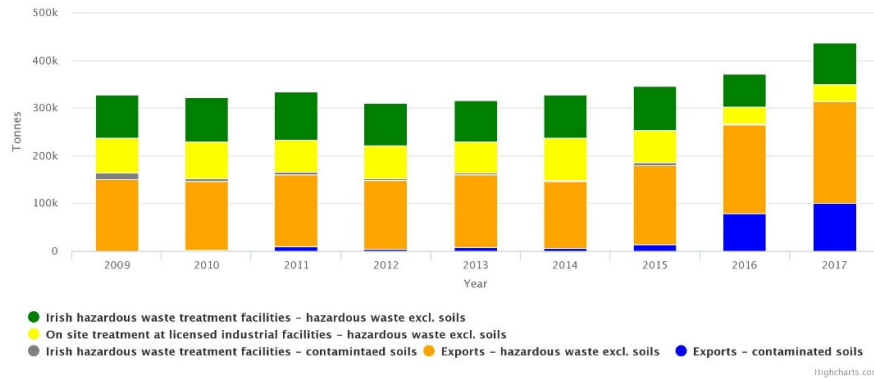
⁶ Progress Report on the implementation of the National Hazardous Waste Management Plan 2014 – 2020, EPA, 2018.

⁷ Article 16 of EU Waste Framework Directive 2008/98/EC provides the following description of the proximity principle: “[waste] is to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health”.

⁸ Progress Report on the implementation of the National Hazardous Waste Management Plan 2014 – 2020, EPA, 2018.



Figure 1: Hazardous waste treatment location



Source: Environmental Protection Agency⁹

- 2.6 Figure 1 breaks down hazardous waste in the State by treatment destination. This shows that exports are the most important outlet for hazardous waste, increasingly at the expense of on-site treatment at licensed facilities as the State does not have the facilities required to treat all of the hazardous waste it produces. In 2017, the State exported 314,529 tonnes of hazardous waste. Approximately 101,000 tonnes of contaminated soil was exported.¹⁰ Contaminated soil accounts also for an increasing share of hazardous waste exports as activity in the construction sector in the State continues to expand.
- 2.7 34% of the hazardous waste exported in 2016 went for disposal¹¹ with the remaining 66% going for recovery.¹² 51% of the hazardous waste exported by the State in 2016 went to the United Kingdom, 21% to Germany and 17% to Belgium, a similar trend to previous years.

Hazardous Waste Disposal Services

- 2.8 The disposal of hazardous waste typically involves one or more of the following activities: collection; transportation; intermediate treatment including sorting and consolidation; final treatment; and disposal of waste. Some providers of hazardous waste management services in the State are vertically integrated and provide most, if not all, of these services. In contrast, some hazardous waste management services providers only offer collection and transportation services where they transport hazardous waste to treatment or disposal sites. Typically, most providers operate a fleet of trucks to collect hazardous waste storage containers of various types and sizes at customers' premises.

⁹ <https://www.epa.ie/nationalwastestatistics/hazardous/>

¹⁰ Ibid.

¹¹ Disposal is defined within the European Commission's Waste Framework Directive, 75/442/EEC, of 15 July 1975 on waste as any operations that remove waste permanently from material cycles. For more information, see: https://ec.europa.eu/environment/waste/studies/pdf/r_d_part_a.pdf

¹² Recovery is defined in the European Commission's Waste Framework Directive, 75/442/EEC as any operations that substitute primary raw materials.



- 2.9 Hazardous waste is typically transported to a site known as a transfer station where the waste may be treated, sorted and/or consolidated. Some hazardous waste management services providers also operate a material recovery facility (“MRF”) to sort the waste collected from customers. Typically, a MRF is co-located with a transfer station. Most hazardous waste requires some form of treatment in a treatment facility before final recovery or disposal.
- 2.10 In order to operate a transfer station or treatment facility, a hazardous waste management services provider requires either a waste permit licence from a local authority or a licence from the EPA.

Licencing

- 2.11 In order to collect hazardous waste in the State, a valid waste collection permit and waste transfer form are required. These are issued by the National Waste Collection Permit Office.
- 2.12 For hazardous waste storage and treatment facilities, Irish law provides for a two-tier authorisation system. Depending on the level of activity involved, either an EPA licence or a local authority permit is required. The majority of hazardous waste disposal or recovery sites must have one of two EPA licences.
- 2.13 A hazardous waste facility will require either an industrial emissions licence or a waste licence under the Waste Management Act, 1996 from the EPA. An industrial emissions licence allows waste producers to treat their waste on-site. The capacity of the facility determines which licence is required. In very limited circumstances, certain hazardous waste may be treated under a waste facility permit from a local authority (e.g., batteries and end of life vehicles).
- 2.14 Planning permission must be in place before a licence can be issued by the EPA. The EPA informed the Commission that it can take approximately 9-12 months to process an application for a licence to operate a hazardous waste facility in the State. Factors that can affect the time involved in processing an application include the following:
- a) The quality of the application;
 - b) The complexity of the proposed facility;
 - c) The speed of response to further information requests;
 - d) Whether an environmental impact assessment is required;
 - e) Whether objections are received from the public; and
 - f) Whether an oral hearing takes place.



- 2.15 An EPA licence covers a specific category (or categories) of waste (e.g., oil re-refining or other re-uses of oil, etc.) and the specific methods to be used to treat that waste.
- 2.16 EPA licences can be changed by (a) technical amendments, or (b) a full licence review. Technical amendments typically involve minor changes to a license, e.g., adding hazardous waste streams that are similar to those already included in the original licence. In contrast, applications to make significant changes to existing licences require licence reviews that are essentially re-applications. For example, a hazardous waste facility looking to change from being solely a transfer station to a treatment facility would require a full licence review by the EPA. Similarly, a hazardous waste facility seeking to treat a type of hazardous waste completely different from the hazardous waste streams included in the original licence may require a full licence review.
- 2.17 There are approximately twenty licensed facilities for hazardous waste treatment and transfer in the State, with a further eight facilities that are also permitted to accept certain types of hazardous waste.

Export

- 2.18 All transfrontier shipments of hazardous waste originating in the State must be notified to and through the National TFS Office (NTFSO) at Dublin City Council. A notification to the NTFSO involves submitting a notification document which must be accompanied by:
 - a) The notification fee;
 - b) A copy of the contract drawn up between the notifier and the consignee for the recovery or disposal of the hazardous waste;
 - c) Financial guarantee;
 - d) A list of carriers/hauliers, indicating waste collection permit reference numbers;
 - e) A detailed description of waste and appropriate waste codes;
 - f) A transport itinerary; and
 - g) Contact details for the competent national authorities for waste management in the countries of destination and transit.
- 2.19 Before any shipment takes place, notifiers of hazardous waste shipments are legally obliged to put in place a financial guarantee to cover the cost of transport, disposal or recovery, storage for up to 90 days, and any costs incurred due to illegal or incomplete shipments.¹³

¹³ National TFS Office, for further details please see:
http://www.dublincity.ie/sites/default/files/content/WaterWasteEnvironment/Waste/National_TFS_Office/Documents/TFSGuidelineforCompletingNotificationMovement.pdf



- 2.20 If any significant change is made to the details and/or conditions of the shipment, (e.g., changes to the intended quantity, route, date of shipment, etc.), the notifier must immediately inform the NTFSO, all other competent authorities concerned and the consignee. A new notification must be submitted, unless all the competent authorities concerned consider that the proposed changes do not require a new notification. Where such changes involve additional competent authorities to those involved in the original notification, a new notification must be submitted to the NTFSO. Within three working days of receiving the waste, the facility must provide confirmation in writing to the notifier and to the NTFSO that the waste has been received.



3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

- 3.1 The Commission is required to form a view as to whether or not a proposed merger or acquisition which has been notified to it will result in a substantial lessening of competition in any markets for goods or services in the State.
- 3.2 The Commission focuses its merger review on the part or parts of the economy that will most likely be affected by the Proposed Transaction. This involves defining relevant product and geographic markets to the extent necessary depending on the particular circumstances of a given case.

Horizontal Overlap

- 3.3 There is a horizontal overlap between Enva and the Rilta Group in the supply of non-hazardous and hazardous waste management services in the State.
- 3.4 With respect to non-hazardous waste, there is horizontal overlap between Enva and the Rilta Group in the State with respect to the following services:
- The supply of non-hazardous aqueous waste treatment services; and
 - The supply of non-hazardous contaminated soil collection services.
- 3.5 With respect to hazardous waste, there is horizontal overlap between Enva and the Rilta Group in the State with respect to the following services:
- The supply of hazardous lead acid battery collection services;
 - The supply of hazardous waste management/brokerage services;
 - The supply of hazardous contaminated soil collection services;
 - The supply of hazardous contaminated packaging collection services;
 - The supply of hazardous contaminated packaging treatment services;
 - The supply of hazardous oily tank and interceptor waste collection services;
 - The supply of hazardous oily tank and interceptor waste treatment services;
 - The supply of hazardous waste lubricant oil collection services;
 - The supply of hazardous waste lubricant oil treatment services; and
 - The sale of reprocessed fuel oil.



Vertical Relationships

- 3.6 There are vertical aspects to the Proposed Transaction since both Enva and the Rilta Group are active at different levels of the supply chain for the collection and treatment of the following waste streams in the State:
- non-hazardous aqueous waste;
 - hazardous contaminated packaging;
 - hazardous oily tank and interceptor waste; and
 - hazardous waste lubricant oil.
- 3.7 When assessing the vertical aspects of a proposed merger, a distinction is made between an upstream and a downstream market. The supply of a waste collection service is considered the upstream market while the supply of a waste treatment service is the downstream market. Both Enva and the Rilta Group are vertically integrated in that both firms collect non-hazardous and hazardous waste which they treat in their treatment facilities in the State.
- 3.8 Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry and lead to a substantial lessening of competition through, for example, the foreclosure of the merged firm's competitors. The Commission will assess the vertical effects of the Proposed Transaction for those waste streams where Enva and the Rilta Group are vertically integrated.

Relevant Product and Geographic Markets

Views of the Undertakings Involved

- 3.9 With respect to the relevant product market, the parties state the following in the notification:

“The Parties submit that the relevant product markets are the collection and treatment of hazardous and non-hazardous waste. ... This reality – i.e., that the parties face competition at all levels of their business and from multiple different types of competitors – supports strongly the notion of an overall hazardous waste market.”

- 3.10 With respect to the relevant geographic market, the parties state the following in the notification:

“The Parties submit that the relevant geographic markets are, for collection, nationwide, and for treatment, Europe-wide.”



Views of the Commission

- 3.11 In line with previous merger decisions by the European Commission,¹⁴ the Commission considers that hazardous and non-hazardous waste management constitute separate relevant product markets.
- 3.12 The Commission does not agree with the parties' view that there is a broad product market for hazardous waste. The types of hazardous waste listed in paragraph 3.5 above are handled in very different ways and the options available for disposal, treatment or recovery vary for each type of hazardous waste.
- 3.13 The European Commission has in previous merger decisions defined separate relevant product markets for: (a) the collection of hazardous waste, and (b) the treatment of hazardous waste.¹⁵ The Commission sees no reason to take a different approach in this determination.
- 3.14 In order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the following potential relevant product markets:
- The supply of hazardous waste management/brokerage services;
 - The supply of hazardous lead acid battery collection services;
 - The supply of hazardous contaminated packaging collection services;
 - The supply of hazardous contaminated packaging treatment services;
 - The sale of reprocessed fuel oil;
 - The supply of hazardous contaminated soil collection services;
 - The supply of hazardous oily tank and interceptor waste collection services;
 - The supply of hazardous oily tank and interceptor waste treatment services;
 - The supply of hazardous waste lubricant oil collection services; and
 - The supply of hazardous waste lubricant oil treatment services.
- 3.15 These are the narrowest potential product markets affected by the Proposed Transaction. As with hazardous waste, the Commission considers that the collection of non-hazardous waste is a separate product market from the treatment of non-hazardous waste.

¹⁴ See, for example, Case No COMP/M.5901 – Montagu/GIP/Greenstar which can be accessed at: http://ec.europa.eu/competition/mergers/cases/decisions/m5901_222_2.pdf

¹⁵ See, for example, Case No COMP/M.2897 – Sita Sverige AB/Sydskraft Ecoplus which can be accessed at: http://ec.europa.eu/competition/mergers/cases/decisions/m2897_en.pdf



- 3.16 With respect to the two types of non-hazardous waste listed in paragraph 3.4 above (i.e., non-hazardous aqueous waste and non-hazardous contaminated soil), the Commission will assess the likely competitive impact of the Proposed Transaction in the following potential relevant product markets:
- The supply of non-hazardous aqueous waste treatment services; and
 - The supply of non-hazardous contaminated soil collection services.
- 3.17 With respect to the relevant geographic market, the Commission has assessed the likely competitive impact of the Proposed Transaction in the State. This is the narrowest potential geographic market affected by the Proposed Transaction. The Commission, however, does not consider it necessary in this determination to come to a definitive view on the precise geographic scope of each of the potential product markets listed in paragraphs 3.14 and 3.16 above since it will not have a material impact on the Commission's assessment of the competitive impact of the Proposed Transaction.



4. COMPETITIVE ASSESSEMENT

Introduction

- 4.1 The Commission now sets out in detail its assessment of the competitive impact of the Proposed Transaction in each of the potential relevant markets listed in paragraphs 3.14 and 3.16 above.

(i) The Supply of Non-hazardous Aqueous Waste Treatment Services in the State

- 4.2 Non-hazardous aqueous waste is a broad term that encompasses a wide range of water-based wastes, including run-off wastewater from landfills (often referred to as landfill leachate) which is the most prevalent type of non-hazardous aqueous waste.
- 4.3 In its response to the Phase 2 RFI, Enva provided the following description of the process of treating non-hazardous aqueous waste: *“This process involves the coagulation, flocculation and precipitation of suspended material in the wastewater for separation, and thereafter we use balancing/pH adjustment etc if necessary to ensure that when we discharge the treated water to sewer it is within our licenced discharge limits.”*

Market Structure

- 4.4 There are three main suppliers of non-hazardous aqueous waste treatment services in the State: Irish Water, Enva and the Rilta Group.
- 4.5 Irish Water is the national water utility responsible for the provision of all public water and wastewater services in the State. Irish Water is the largest supplier of non-hazardous aqueous waste treatment services in the State. Irish Water treats non-hazardous aqueous waste in 511 EPA-licensed treatment plants in the State.¹⁶ Irish Water informed the Commission that it treated 1.15 billion litres (approximately 1.15 million tonnes) of non-hazardous aqueous waste in 2017.¹⁷
- 4.6 Irish Water expressed the view to the Commission that *“the vast majority of non-hazardous waste water in the State goes through an Irish Water treatment facility.”* Irish Water informed the Commission that it currently treats non-hazardous aqueous waste on behalf of third parties. Irish Water expressed the view to the Commission that the fee charged by Irish Water for treating non-hazardous aqueous waste on behalf of third parties *“would likely be cheaper”* than the fee charged by either Enva or the Rilta Group.
- 4.7 In contrast to Irish Water, both Enva and the Rilta Group are licensed by the EPA to treat much smaller volumes of non-hazardous aqueous waste in the State.

¹⁶ Irish Water does not treat hazardous aqueous waste.

¹⁷ Irish Water has a treatment capacity of 1.4 billion litres per annum of non-hazardous aqueous waste.



- 4.8 Enva currently treats non-hazardous aqueous waste in its facilities in [...].¹⁸ Enva treated [...] tonnes of non-hazardous aqueous waste in the State in 2017.¹⁹ [...] tonnes comprise non-hazardous aqueous waste that was delivered by third parties to Enva for treatment in 2017.²⁰ Enva does not export non-hazardous aqueous waste.
- 4.9 The Rilta Group treated [...] tonnes of non-hazardous aqueous waste in 2017.²¹ [...] tonnes comprise non-hazardous aqueous waste that was delivered by [...] to the Rilta Group for treatment in 2017. The Rilta Group does not export non-hazardous aqueous waste.²²
- 4.10 In addition to Irish Water, Enva and the Rilta Group, there are a number of entities active in the State that currently treat very small volumes of non-hazardous aqueous waste.
- 4.11 Indaver treats non-hazardous aqueous waste in its waste-to-energy facility in Co. Meath. Indaver informed the Commission that it treated 402 tonnes of non-hazardous aqueous waste in the State in 2017.²³ Indaver informed the Commission that it does not treat non-hazardous aqueous waste on behalf of third parties.
- 4.12 Veolia treats non-hazardous aqueous waste in its facility in Fermoy, Co. Cork. Veolia informed the Commission that it treated 100 tonnes of non-hazardous aqueous waste in the State in 2017.²⁴ Veolia informed the Commission that it does not treat non-hazardous aqueous waste on behalf of third parties.
- 4.13 McBreen Environmental Drain Services Limited (“McBreen”) informed the Commission that it collects non-hazardous aqueous waste in the State which it treats in its facility in Co. Cavan.²⁵ McBreen collected 75 tonnes of non-hazardous aqueous waste in the State in 2017, all of which it treated.²⁶ McBreen informed the Commission that it does not treat non-hazardous aqueous waste on behalf of third parties.

Competitive Effects Analysis

- 4.14 Following completion of the Proposed Transaction, the merged entity will face a significant competitive constraint from Irish Water for the supply of non-hazardous aqueous waste treatment services in the State. As noted above, Irish Water treated the vast majority of non-hazardous aqueous waste that was produced in the State in

¹⁸ [...]

¹⁹ Enva informed the Commission that “As the same process applies to treat either hazardous or non-hazardous aqueous waste, Enva can either use available capacity to treat either non-hazardous aqueous waste or hazardous aqueous waste depending on demand and available margin.” Enva is licensed by the EPA to treat 34,000 tonnes of non-hazardous and hazardous aqueous waste per annum in its facility in Shannon. The equivalent treatment capacity figure for Enva’s facility in Dublin is 34,500 tonnes of non-hazardous and hazardous aqueous waste per annum.

²⁰ The [...] was accounted for by [...] who sold [...] tonnes of non-hazardous aqueous waste to Enva for treatment in 2017. The equivalent percentage figure in 2016 was also [...].

²¹ The Rilta Group is licensed by the EPA to treat 60,000 tonnes of non-hazardous and hazardous aqueous waste per annum in its facility in Dublin.

²² In its response to the Phase 2 RFI, the Rilta Group expressed the following view as to why it did not export non-hazardous aqueous waste during the period 1 January 2014 to 31 December 2017: “The treatment of non-hazardous aqueous waste is a low value activity that is also relatively bulky and that is generally more economic to consign locally to an Irish Water facility.”

²³ Indaver has a treatment capacity of 4,000 tonnes of non-hazardous aqueous waste per annum.

²⁴ Veolia informed the Commission that all of the non-hazardous aqueous waste that it treats in the State originates from customers with whom it has total waste management contracts.

²⁵ McBreen does not treat hazardous aqueous waste.

²⁶ McBreen is licensed by the EPA to treat 10,000 tonnes of non-hazardous aqueous waste per annum.



2017. Furthermore, as noted above, there are a number of entities active in the State that currently treat very small volumes of non-hazardous aqueous waste. The Commission therefore considers that the Proposed Transaction will not result in any horizontal competition concerns in relation to the supply of non-hazardous aqueous waste treatment services in the State.

- 4.15 Enva is vertically integrated in that it both collects and treats non-hazardous aqueous waste in the State. In its assessment of the likely competitive impact of the Proposed Transaction in the supply of non-hazardous aqueous waste treatment services in the State, the Commission has also assessed whether the Proposed Transaction is likely to provide the merged entity with the ability and incentive to foreclose its rivals in the supply of non-hazardous aqueous waste collection services in the State.
- 4.16 The Commission considers that the Proposed Transaction will not provide the vertically-integrated merged entity with the ability and incentive to foreclose its rivals in the supply of non-hazardous aqueous waste collection services in the State. Following completion of the Proposed Transaction, rival suppliers of non-hazardous aqueous waste collection services in the State will be able to send non-hazardous aqueous waste to Irish Water for treatment.
- 4.17 The Commission therefore considers that the Proposed Transaction will not substantially lessen competition in relation to the supply of non-hazardous aqueous waste treatment services in the State.

(ii) The Supply of Non-hazardous Contaminated Soil Collection Services in the State

- 4.18 Enva and the Rilta Group overlap horizontally in the supply of non-hazardous contaminated soil collection services in the State.²⁷
- 4.19 Enva informed the Commission that [...]% of the non-hazardous contaminated soil collected by it in the State in 2017 was sent directly to landfill with [...]% treated by Enva in its facility in Portlaoise before subsequently being sent to landfill in the State.²⁸ The remaining [...]% of non-hazardous contaminated soil collected by Enva in 2017 was exported. The Rilta Group informed the Commission that [...]% of the non-hazardous contaminated soil collected by it in the State in 2017 was sent directly to landfill with the remaining [...]% exported (either directly from the customer's site or indirectly via the Rilta Group's facility in Co. Dublin).

Market Structure

- 4.20 The parties state in the notification that approximately 600,000 tonnes of contaminated soil was produced in the State in 2016, of which approximately 520,000 was non-hazardous contaminated soil.
- 4.21 Enva informed the Commission that it started collecting non-hazardous contaminated soil in the State in 2015 having previously only collected hazardous contaminated

²⁷ There is no overlap between the parties in the supply of non-hazardous contaminated soil treatment services in the State since the Rilta Group, unlike Enva, does not treat non-hazardous contaminated soil.

²⁸ Enva informed the Commission that there are two types of treatment carried out by it in the State with respect to non-hazardous contaminated soil: [...].



soil.²⁹ Enva collected³⁰ [...] tonnes of non-hazardous contaminated soil in the State in 2016 which represents approximately [0-5]% of the total volume of non-hazardous contaminated soil produced in the State in 2016. In 2017, however, Enva collected [...] tonnes of non-hazardous contaminated soil in the State. In addition, [...] tonnes of non-hazardous contaminated soil was collected by third parties and sold to Enva for treatment in 2017.³¹ Thus, Enva handled [...] tonnes of non-hazardous contaminated soil in the State in 2017 which represents, based on the 2016 figure of 520,000 (since no figure for 2017 is available), approximately [10-15]% of the total volume of non-hazardous contaminated soil produced in the State in 2017.

- 4.22 The Rilta Group collected³² [...] tonnes of non-hazardous contaminated soil in the State in 2016 which represents approximately [15-20]% of the total volume of non-hazardous contaminated soil produced in the State in 2016. In 2017, the Rilta Group collected [...] tonnes of non-hazardous contaminated soil in the State, which represents, based on the 2016 figure of 520,000 (since no figure for 2017 is available), approximately [15-20]% of the total volume of non-hazardous contaminated soil produced in the State in 2017.
- 4.23 Thus, in 2016, Enva and the Rilta Group had a combined share of approximately [15-20]% in the supply of non-hazardous contaminated soil collection services in the State. However, Enva and the Rilta Group's combined share increased to at least [30-35]% in 2017 as a result of Enva significantly growing its share in the supply of non-hazardous contaminated soil collection services in the State.
- 4.24 Neither Enva nor the Rilta Group provided market share data to the Commission for the supply of non-hazardous contaminated soil collection services in the State. Enva informed the Commission that *"there is no published data on the collection volumes of non-hazardous soil (contaminated or not) and there are a very large number (>500 in Dublin alone) of hauliers permitted to collect this waste (including almost all tipper truck operators)."* The Rilta Group expressed the following view to the Commission regarding market share data for the supply of non-hazardous contaminated soil collection services in the State: *"it is very difficult to estimate market shares for collection as there are so many permitted collectors operating in the market and there is no definitive data available."*
- 4.25 Enrich Environmental Limited ("Enrich"), a broker of non-hazardous and hazardous contaminated soil in the State, informed the Commission that it brokered 16,180 tonnes of non-hazardous contaminated soil in the State in 2017.³³

Competitive Effects Analysis

²⁹ Enva informed the Commission that it started collecting non-hazardous contaminated soil in 2015 *"in response to increasing activity in the construction sector which had been relatively inactive since 2008/9. [...]"*

³⁰ Enva sub-contracts the collection of non-hazardous contaminated soil to third parties.

³¹ Of this total figure of [...] tonnes, [...] tonnes of non-hazardous contaminated soil was sold by [...] to Enva for treatment.

³² Like Enva, the Rilta Group sub-contracts the collection of non-hazardous contaminated soil to third parties. Unlike Enva, no third party sold non-hazardous contaminated soil to the Rilta Group over the period 1 January 2013 to 31 December 2017.

³³ Enrich does not own or operate a transfer station or treatment facility in the State and does not collect or treat non-hazardous or hazardous contaminated soil in the State. Enrich informed the Commission that it *"analyses its customer's contaminated soil to determine the appropriate disposal option and then sub-contracts [collection] to haulage companies."*



- 4.26 The Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of non-hazardous contaminated soil collection services in the State.
- 4.27 Notwithstanding the fact that the merged entity will have a market share of approximately [30-35]%, it will face a competitive constraint from brokers such as Enrich and a large number of companies that are licenced to collect non-hazardous contaminated soil in the State.
- 4.28 Most third parties contacted by the Commission raised no competition concerns about the likely impact of the Proposed Transaction in the supply of non-hazardous contaminated soil collection services in the State.
- 4.29 Veolia expressed the view to the Commission that *“any company [can collect non-hazardous contaminated soil] as it just necessitates the movement of soil from one place to another.”*
- 4.30 Enrich expressed the view that the Proposed Transaction would have no impact on the supply of non-hazardous contaminated soil collection services in the State. Enrich informed the Commission that non-hazardous contaminated soil can be sent to landfill.³⁴
- 4.31 Since the majority of non-hazardous contaminated soil produced in the State is sent to landfill, it is not necessary to operate an EPA-licensed waste transfer station in order to compete in the market for supply of non-hazardous contaminated soil collection services in the State.
- 4.32 The Commission therefore considers that the Proposed Transaction will not substantially lessen competition in relation to the supply of non-hazardous contaminated soil collection services in the State.

(iii) The Supply of Hazardous Waste Management/Brokerage Services in the State

- 4.33 Both Enva and the Rilta Group provide a hazardous waste management service (also referred to as brokerage) comprising the collection of various types of hazardous waste (e.g., sulphuric acid, filter cakes, medicines, etc.) in drums and intermediate bulk containers which are stored and bulked-up in their facilities prior to export.³⁵ Neither Enva nor the Rilta Group treat the hazardous waste that is collected in this category. Thus, Enva and the Rilta Group overlap in the supply of hazardous waste management/brokerage services in the State.
- 4.34 The Commission’s assessment of the likely competitive impact of the Proposed Transaction in the supply of hazardous waste management/brokerage services in the State does not encompass the following types of hazardous waste: lead acid batteries, contaminated soil, contaminated packaging, oily tank and interceptor waste, and waste lubricant oil. The likely competitive impact of the Proposed Transaction in

³⁴ This view was also expressed to the Commission by Indaver.

³⁵ Both Enva and the Rilta Group export 100% of the hazardous waste collected in this potential market in the State.



relation to the collection and treatment of these five types of hazardous waste is set out in detail below.

Competitive Effects Analysis

- 4.35 The Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of hazardous waste management/brokerage services in the State.
- 4.36 Estimated share data provided by Enva and the Rilta Group indicates that Indaver and Veolia are the two biggest suppliers of hazardous waste management/brokerage services in the State, with estimated market shares in 2016 of [35-40]% and [20-25]%, respectively.³⁶ Enva and the Rilta Group estimate that they each had a market share of [10-15]% in the State in 2016.
- 4.37 Following completion of the Proposed Transaction, the merged entity will become the second biggest supplier of hazardous waste management/brokerage services in the State with an estimated market share of [25-30]%. However, the merged entity will continue to face a competitive constraint from Indaver and Veolia following completion of the Proposed Transaction.
- 4.38 Third parties contacted by the Commission raised no concerns about the likely competitive impact of the Proposed Transaction in the supply of hazardous waste management/brokerage services in the State.
- 4.39 The Commission therefore considers that the Proposed Transaction will not substantially lessen competition in relation to the supply of hazardous waste management/brokerage services in the State.

(iv) The Supply of Hazardous Lead Acid Battery Collection Services in the State

- 4.40 Both Enva and the Rilta Group collect hazardous lead acid batteries in the State which they store and bulk-up in their facilities before export to lead smelters for treatment.³⁷ Neither Enva nor the Rilta Group treat lead acid batteries. Thus, Enva and the Rilta Group overlap in the supply of hazardous lead acid battery collection services in the State.

Competitive Effects Analysis

- 4.41 Table 1 below lists estimated market shares in the potential market for the supply of hazardous lead acid battery collection services in the State in 2017.³⁸

³⁶ Veolia informed the Commission that it estimates that its market share in the supply of hazardous waste management/brokerage services in the State is approximately 25%. The estimated market share data provided to the Commission by Enva and the Rilta Group is based on annual environmental reports published by the EPA for 2016.

³⁷ Both Enva and the Rilta Group informed the Commission that since lead acid batteries have a value, customers are paid by Enva and the Rilta Group for collection.

³⁸ Since all lead acid batteries collected in the State are exported for treatment, the export data provided by the EPA can be used as a proxy for market shares in the supply of hazardous lead acid battery collection services in the State.



Table 1: Market Shares in the Supply of hazardous lead acid battery collection services in the State, 2017

Firm	Volume (tonnes)	Market Share (%)
Wilton Waste	3,182	21
The Rilta Group	2,557	17
Jamestown Metal Resources Limited	2,203	14
O'Reilly Recycling Limited	1,599	10
Irish Metal Refineries Limited	1,280	8
Hammond Lane Metal Company	1,268	8
Hi-Volt Ireland Limited	1,107	7
KMK Metals Recycling Limited	602	4
Enva	599	4
The Recycling Village Limited	593	4
St. Margaret's Recycling Limited	426	3
Total	15,415	100

Source: The Commission, based on EPA data.

- 4.42 Enva has a relatively small market share (4%) in the supply of hazardous lead acid battery collection services in the State.³⁹ In contrast, the Rilta Group is the second largest supplier of hazardous lead acid battery collection services in the State with a market share of 17% in 2017.⁴⁰ Following completion of the Proposed Transaction, the merged entity will have a market share of approximately 21% in the supply of hazardous lead acid battery collection services in the State.
- 4.43 Following completion of the Proposed Transaction, the merged entity will compete with a number of suppliers of hazardous lead acid battery collection services in the State, including Wilton Waste Recycling Limited (21%), Jamestown Metal Resources Limited (14%), O'Reilly Recycling Limited (10%), Irish Metal Refineries Limited (8%), Hammond Lane Metal Company (8%), Hi-Volt Ireland Limited (7%), and KMK Metals Recycling Limited (4%).
- 4.44 All third party submissions received by the Commission during the Phase 1 investigation raised competition concerns about the likely impact of the Proposed Transaction in the potential market for the supply of hazardous lead acid battery

³⁹ KMK Metals Recycling Limited, a competing supplier of lead acid battery collection services currently active in the State, expressed the view to the Commission that "Enva is a smaller player in the State than Rilta" in the supply of lead acid battery collection services in the State.

⁴⁰ An undated internal document provided to the Commission by the Rilta Group in response to the Phase 1 RFI contains the following statement: "Rilta Environmental is the largest lead acid battery recycler in Ireland".



collection services in the State.⁴¹ However, all third parties (i.e., customers and competitors) contacted by the Commission raised no competition concerns about the likely impact of the Proposed Transaction in this potential market. Customers that responded to the Commission's questionnaire cited alternative suppliers of hazardous lead acid battery collection services in the State to Enva and the Rilta Group, including Wilton Waste Recycling Limited, Hi-Volt Ireland Limited and O'Reilly Recycling Limited. Furthermore, none of the competitors contacted by the Commission expressed competition concerns about the Proposed Transaction.

- 4.45 In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of hazardous lead acid battery collection services in the State.

(v) The Supply of Hazardous Contaminated Packaging Collection Services in the State

- 4.46 Both Enva and the Rilta Group collect hazardous contaminated packaging in the State which they treat in their facilities before export for recovery. Thus, Enva and the Rilta Group overlap in the supply of hazardous contaminated packaging collection services in the State.

Competitive Effects Analysis

- 4.47 The Commission considers that this overlap between the notifying parties raises no competition concerns since Enva and the Rilta Group subcontract the collection of the vast majority of hazardous contaminated packaging in the State to third party hauliers.
- 4.48 Enva collected [...] tonnes of hazardous contaminated packaging in the State in 2017. However, Enva informed the Commission that approximately [...] % was collected by third party hauliers on behalf of Enva. The Rilta Group collected [...] tonnes of hazardous contaminated packaging in the State in 2017, [...] of which was either collected by third party hauliers on behalf of the Rilta Group or collected by third parties (including customers) and delivered to the Rilta Group for treatment.
- 4.49 The Rilta Group expressed the view to the Commission that "*market shares are difficult to estimate as there are so many permitted collectors operating in the [collection] market and there is no definitive data available.*" Both Indaver and Veolia informed the Commission that they collected hazardous contaminated packaging in the State in 2017.⁴² Furthermore, no third parties contacted by the Commission raised any competition concerns about the supply of hazardous contaminated packaging collection services in the State.
- 4.50 In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of hazardous contaminated packaging collection services in the State.

⁴¹ Two third party submissions expressed the view that Enva and the Rilta Group are the two biggest suppliers of hazardous lead acid battery collection services in the State. As detailed in Table 1 above, however, Wilton Waste Recycling Limited is the largest supplier of hazardous lead acid battery collection services in the State and Enva had a relatively small market share (4%) of this potential market in 2017.

⁴² 100% of the hazardous contaminated packaging collected by Indaver in the State in 2017 originated from customers to whom Indaver provided a total waste management service. The equivalent figure for Veolia in the State in 2017 was 90%.



(vi) The Supply of Hazardous Contaminated Packaging Treatment Services in the State

- 4.51 Both Enva and the Rilta Group are active in the supply of hazardous contaminated packaging treatment services in the State. However, the extent of the horizontal overlap between the notifying parties is relatively limited.

Competitive Effects Analysis

- 4.52 In 2017, the Rilta Group treated [...] tonnes of hazardous contaminated packaging in the State which can be categorized into the following three types:

- a) 205 litre steel drums and intermediate bulk containers ([...] tonnes) which are re-conditioned for re-sale;
- b) 205 litre steel drums ([...] tonnes) which are not suitable for re-conditioning; and
- c) 5 litre and 25 litre plastic drums ([...] tonnes) which are shredded prior to export.

- 4.53 In 2017, Enva treated [...] tonnes of hazardous contaminated packaging in the State which can be categorized into the following three types:

- a) 205 litre plastic drums ([...] tonnes), most of which are washed by Enva to remove the hazardous residues and re-sold;
- b) 205 litre steel drums ([...] tonnes) which are exported by Enva for thermal destruction; and
- c) 5 litre and 25 litre plastic drums ([...] tonnes) which are shredded by Enva prior to export.

- 4.54 There is no horizontal overlap between the notifying parties with respect to the re-conditioning of 205 litre steel drums and intermediate bulk containers since Enva is not involved in this business activity.

- 4.55 There is a minimal horizontal overlap between the notifying parties in the State with respect to the treatment of 205 litre steel drums which are not suitable for re-conditioning. This treatment consists of washing the 205 litre steel drums prior to delivery to metal recovery operators. In 2017, whereas the Rilta Group treated [...] tonnes of 205 litre steel drums in the State, Enva only treated [...] tonnes of 205 litre steel drums. The Commission considers that this minimal horizontal overlap between Enva and the Rilta Group in the State with respect to the treatment of 205 litre steel drums raises no competition concerns. Veolia informed the Commission that it treats (i.e., washes) a small volume of 205 litre steel drums that are not suitable for re-conditioning in its facility in Fermoy prior to export for recovery. Indaver informed the Commission that it also treats a small volume of hazardous contaminated plastic packaging in the State.

- 4.56 Enva and the Rilta Group are also both active in the cleaning or shredding of plastic packaging in the State. However, while the vast majority ([...] tonnes) of hazardous contaminated plastic packaging treated by Enva in the State in 2017 comprised 205



litre plastic drums, the Rilta Group did not treat any 205 litre plastic drums in 2017. There is a minimal horizontal overlap between Enva and the Rilta Group in the State with respect to the treatment of 5 litre and 25 litre plastic drums. Given the small volume ([...] tonnes) of 5 litre and 25 litre plastic drums treated by the Rilta Group in the State in 2017, the Commission considers that this minimal horizontal overlap between Enva and the Rilta Group in the State with respect to the treatment of 5 litre and 25 litre plastic drums raises no competition concerns.

- 4.57 No customers contacted by the Commission raised any competition concerns about the likely competitive impact of the Proposed Transaction in the supply of hazardous contaminated packaging treatment services in the State.
- 4.58 The Commission also considers that the Proposed Transaction will not provide the vertically integrated merged entity with the ability and incentive to foreclose its rivals in the supply of hazardous contaminated packaging collection services in the State. As described above, there is a minimal horizontal overlap between the notifying parties in the State with respect to the treatment of: (a) 205 litre steel drums which are not suitable for re-conditioning; and (b) 5 litre and 25 litre plastic drums. Furthermore, both Veolia and Indaver treat hazardous contaminated plastic packaging in the State.
- 4.59 In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of hazardous contaminated packaging treatment services in the State.

(vii) The Sale of Re-processed Fuel Oil in the State

- 4.60 Both Enva and the Rilta Group collect hazardous waste lubricant oil in the State which they re-process into fuel oil.
- 4.61 Enva produces two grades of re-processed fuel oil (“RFO”): (a) standard grade (11LS) RFO which is used to dry stone in quarries to produce tarmacadam and asphalt, and (b) higher grade (20LS) RFO which is used as fuel in steam raising boilers. Enva produced [...] tonnes of standard grade (11LS) RFO in 2017, generating a turnover of €[...] in the State. In contrast, the total tonnage of higher grade (20LS) RFO produced by Enva in the State declined from [...] tonnes in 2013 to [...] tonnes in 2017.⁴³ Enva informed the Commission that it can “switch easily production between both products. All the infrastructure is in place. To produce the higher grade product there are higher processing costs in terms of both chemical reagent and waste disposal costs.”
- 4.62 The Rilta Group produced [...] tonnes of standard grade (11LS) RFO in 2017, generating a turnover of €[...] in the State. The Rilta Group does not produce higher grade (20LS) RFO.

Competitive Effects Analysis

⁴³ In its response to the Phase 2 RFI, Enva provided the following explanation for this decline: “Due to a fall in oil prices in early 2015, the higher costs to produce the higher grade product (20LS) made the product uncompetitive when compared to virgin fuel alternatives. Note that in the second half of 2018, in response to demand [...] (and recovering oil prices), Enva has recommenced producing the 20LS grade.”



- 4.63 There are currently two suppliers of RFO in the State: Enva and the Rilta Group. Following completion of the Proposed Transaction, Enva will be the sole supplier of RFO in the State. Thus, the Proposed Transaction is a two-to-one merger in the sale of RFO in the State. A two-to-one merger which leads to a monopoly in the sale of RFO in the State is likely to lead to a substantial lessening of competition, unless there are strong mitigating factors.
- 4.64 In its response to the Phase 2 RFI, Enva expressed the following view: *“Reprocessed fuel oil directly competes against the alternative fuel options...available to the market. These competing products include other virgin oil (gas oil, light fuel oil etc) as well as gaseous fuels (e.g. Natural Gas & LPG). Where a customer is on the natural gas grid they will almost inevitably use natural gas as it is inevitably the most competitive fuel. Indeed Enva utilise natural gas at its facility in Portlaoise as it is the cheapest option (even when compared to Enva’s own supply of reprocessed fuel oil). However, if the customer is off the natural gas grid then reprocessed fuel oil is one of a number of fuels likely to be considered.”*
- 4.65 None of the customers contacted by the Commission raised competition concerns about the likely competitive impact of the Proposed Transaction in the potential market for the sale of RFO in the State. Customers confirmed to the Commission that, in addition to RFO, they currently use alternative energy sources such as DERV (Diesel Engine Road Vehicle), gas oil and LPG. All customers expressed the view to the Commission that if the price of RFO were to increase following completion of the Proposed Transaction they would switch to alternative energy sources.
- 4.66 In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the sale of RFO in the State.

(viii) The Supply of Hazardous Contaminated Soil Collection Services in the State

- 4.67 Enva and the Rilta Group overlap horizontally in the supply of hazardous contaminated soil collection services in the State. There is no overlap between the notifying parties in the supply of hazardous contaminated soil treatment services in the State since the Rilta Group, unlike Enva, does not treat hazardous contaminated soil.

Market Structure

- 4.68 Table 2 below lists estimated shares of supply in the potential market for the supply of hazardous contaminated soil collection services in the State in 2017.

Table 2: Shares of Supply for Hazardous Contaminated Soil Collection Services in the State, 2017

Firm	Volume (tonnes)	Market Share (%)
The Rilta Group	[...]	[45-50]
Enva	[...]	[40-45]
Enrich	[...]	10
Others	[...]	0



Total	110,947 ⁴⁴	100
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Source: The Commission, based on EPA data and information provided by the notifying parties and Enrich.

- 4.69 The Rilta Group collected⁴⁵ [...] tonnes of hazardous contaminated soil in the State in 2017 which represents approximately [45-50]% of the total volume of hazardous contaminated soil produced in the State in 2017. Enva collected⁴⁶ [...] tonnes of hazardous contaminated soil in the State in 2017 which represents approximately [40-45]% of the total volume of hazardous contaminated soil produced in the State in 2017.
- 4.70 Thus, in 2017, Enva and the Rilta Group had a combined share of approximately [90-95]% in the supply of hazardous contaminated soil collection services in the State.⁴⁷
- 4.71 Enrich informed the Commission that it brokered [...] tonnes of hazardous contaminated soil in the State in 2017.⁴⁸ This accounts for approximately 10% of the total volume of hazardous contaminated soil produced in the State in 2017.
- 4.72 Based on the share of supply estimates set out in Table 2 above, the potential market for the supply of hazardous contaminated soil collection services in the State is highly concentrated. The HHI following implementation of the Proposed Transaction would be 8,200. Furthermore, the change in the HHI would be over 4,000 which, as set out in paragraph 3.10 of the Commission's "Guidelines for Merger Analysis", means that the Commission could not conclude that the Proposed Transaction is unlikely to cause concern and thus has to intensify its analysis of the likely competitive impact of the Proposed Transaction.

Competitive Effects Analysis

- 4.73 The merged entity will have a [90-95]% share of the supply of hazardous contaminated soil collection services in the State following completion of the Proposed Transaction. However, for those customers who produce relatively large volumes of hazardous contaminated soil and therefore have the option of using a broker to dispose of this waste, Enva will face a competitive constraint from Enrich. Furthermore, [...] informed the Commission that it intends to enter the potential market for the supply of hazardous contaminated soil collection services in the State as a broker exporting hazardous contaminated soil to facilities in Europe. [...] expressed the view to the Commission that "*barriers of entry are quite low for the export of contaminated soil and that [...] already has contacts with companies in Europe for treatment.*"
- 4.74 The Commission, however, identified a competition concern in relation to the supply of hazardous contaminated soil collection services to customers who may not be able

⁴⁴ The notifying parties informed the Commission that approximately [...] tonnes of hazardous contaminated soil was produced in the State in 2016.

⁴⁵ The Rilta Group sub-contracts the collection of hazardous contaminated soil to third parties.

⁴⁶ Enva also sub-contracts the collection of hazardous contaminated soil to third parties.

⁴⁷ This is similar to estimated shares of supply provided by the Rilta Group for 2016. The Rilta Group informed the Commission that "*the [notifying] parties collected (and treated or exported) [...]% of the hazardous contaminated soil waste listed by the EPA for the year 2016.*"

⁴⁸ As noted above, Enrich does not own or operate a transfer station or treatment facility in the State and does not collect or treat hazardous (or non-hazardous) contaminated soil in the State. Enrich informed the Commission that it "*analyses its customer's contaminated soil to determine the appropriate disposal option and then sub-contracts [collection] to haulage companies.*"



to use a broker to dispose of their hazardous contaminated soil. This is likely to be the case for customers who wish to dispose of relatively small volumes of hazardous contaminated soil.⁴⁹

- 4.75 Some third parties contacted by the Commission expressed a competition concern about the fact that Enva and the Rilta Group are currently the only two firms in the State that operate a transfer station in which they store and bulk-up hazardous contaminated soil collected from customers. As noted above, Enrich only provides a brokerage service to hazardous contaminated soil customers in the State. Enrich does not own or operate a transfer station and therefore does not collect hazardous contaminated soil. [...]
- 4.76 The Commission was concerned that the Proposed Transaction may provide the merged entity with the ability and incentive to raise its prices (or otherwise harm competition) to customers in the State who may not be able to use a broker to dispose of their hazardous contaminated soil.

Proposals Submitted by Enva

- 4.77 On 19 December 2018, Enva submitted to the Commission formal proposals under section 20(3) of the 2002 Act to accept hazardous contaminated soil from any third party, subject to certain conditions including *“that no individual Hazardous Soil Project is over 2,000 tonnes of Hazardous Contaminated Soil and no individual third party may deliver more than 6,000 tonnes of Hazardous Contaminated Soil in any one year. A maximum volume of 18,000 tonnes of Hazardous Contaminated Soil per year will be accepted under the Hazardous Soil Access Undertaking”*.
- 4.78 The Commission considers that the proposals are sufficient to address the competition concerns identified by the Commission in the potential market for the supply of hazardous contaminated soil collection services in the State. In accordance with section 20(3) and section 26(1) and section 26(4) of the 2002 Act, the proposals have become commitments binding upon Enva.
- 4.79 The Commission considers that the proposals by Enva will ensure that third parties who wish to dispose of relatively small volumes of hazardous contaminated soil will have the option of doing so with the merged entity following completion of the Proposed Transaction. As a result, the Commission considers that the Proposed Transaction will not substantially lessen competition in the potential market for the supply of hazardous contaminated soil collection services in the State.

(ix) The Supply of Hazardous Oily Tank and Interceptor Waste Collection Services in the State

- 4.80 There are two broad types of hazardous tank and interceptor waste: (a) hazardous chemical waste, and (b) hazardous oily tank and interceptor waste.

⁴⁹ A number of third parties expressed the view to the Commission that smaller volumes of hazardous contaminated soil need to be bulked up in a transfer station prior to export. In contrast, relatively large volumes of hazardous contaminated soil can be transported direct from point of origin to port for export without the need for bulking up in a transfer station.



Hazardous Chemical Waste

- 4.81 Enva informed the Commission that hazardous chemical aqueous waste includes “acidic/alkali streams and various other hazardous contaminated waste water streams.” There is a minimal horizontal overlap between Enva and the Rilta Group in the State for the supply of hazardous chemical waste collection services. In 2017, Enva generated turnover in the State of €[...] from the collection of hazardous chemical waste. In contrast, the Rilta Group generated turnover in the State of only €[...] from the collection of hazardous chemical waste. The Commission therefore considers that the Proposed Transaction does not raise any competition concerns in the supply of hazardous chemical waste collection services in the State.
- 4.82 Unlike Enva, the Rilta Group does not treat hazardous chemical waste. Given the absence of any horizontal overlap between Enva and the Rilta Group in the supply of hazardous chemical waste treatment services in the State and the minimal existing horizontal overlap between the notifying parties in the State in the collection of hazardous chemical waste, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the supply of hazardous chemical waste collection services in the State.

Hazardous Oily Tank and Interceptor Waste

- 4.83 In a submission to the Commission dated 22 October 2018, the notifying parties state the following: “Oily water mainly derives from: the cleaning of interceptors (oily water separators which form part of a sites drainage infrastructure) located on retail filling stations, oil depots, transportation depots and many other sites where there is the potential for oil leaks into the drainage system; bund cleaning where oil storage tanks have a containment structure around them to capture any leakage from the tanks and associated pipework. As rainwater enters these it gets contaminated with the oil and has to be removed; and the cleaning of oil tanks and clean-up of oil spillages.”
- 4.84 The cleaning of tanks and interceptors generates an oily hazardous waste which is collected and transported to licensed facilities for treatment. Both Enva and the Rilta Group are vertically integrated in that both firms collect hazardous oily tank and interceptor waste which they treat in their facilities in the State. The Commission will assess the likely competitive impact of the Proposed Transaction in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State.

Market Structure

- 4.85 Paragraph 3.1 of the Commission’s “Guidelines for Merger Analysis” states that “A central element in assessing the competitive impact of a merger is identifying its effect on market structure.”⁵⁰ Market structure can be characterised by the number, size and distribution of firms in a market. A merger or acquisition will have an impact on market structure as the merging parties which were two firms pre-acquisition become one firm post-acquisition.

⁵⁰ The Commission’s “Guidelines for Merger Analysis” can be accessed at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines-1.pdf>



4.86 Enva and the Rilta Group are the only two firms with facilities in the State that treat hazardous oily tank and interceptor waste. Furthermore, competing collectors of hazardous oily tank and interceptor waste contacted by the Commission indicated that they have never exported hazardous oily tank and interceptor waste for treatment. The Phase 1 RFI asked the notifying parties to break out the total tonnage of hazardous oily tank and interceptor waste delivered by competing collectors to the facilities of Enva and the Rilta Group for treatment. Using this information and the total volume of hazardous oily tank and interceptor waste collected and treated by Enva and the Rilta Group in the State provides a basis for estimating market shares in the State. The results are presented in Table 3 below.

Table 3: Market Shares in the Supply of Hazardous Oily Tank & Interceptor Waste Collection Services, by Tonnage, 2013 & 2017, the State

Firm	2013	2017
The Rilta Group	[40-45]	[45-50]
Enva	[35-40]	[30-35]
Lehane Environmental	[0-5]	[0-5]
Thorntons Recycling	[0-5]	[0-5]
Super Drain	[0-5]	[0-5]
Panda/Greenstar	[0-5]	-
Complete Environmental Service (CES)	[0-5]	[0-5]
AQS Environmental Solutions	[0-5]	[0-5]
McBreen Environmental	[0-5]	[0-5]
Others	[0-5]	[5-10]
Total	100%	100%
Pre-merger HHI	[...]	[...]
Post-merger HHI	[...]	[...]
Delta	[...]	[...]

Source: The Commission based on information provided by Enva and the Rilta Group.

4.87 Table 3 indicates that Enva and the Rilta Group are consistently the two leading suppliers of hazardous oily tank and interceptor waste collection services in the State, with a combined market share of [75-80]% in 2017, a decline from [80-85]% in 2013. There is a long tail of smaller competitors, with market shares that never exceed [0-5]% in either 2013 or 2017.

4.88 Market concentration refers to the degree to which production/supply in a particular product market is concentrated in the hands of a few large firms. The most commonly used measure of concentration is the Herfindahl-Hirschman index (“HHI”), which is defined as the sum of the squares of the market shares of all firms participating in the market. According to the Commission’s *“Guidelines for Merger Analysis”*, any market with a HHI greater than 2,000 is highly concentrated while a change in the pre-merger HHI compared to the post-merger HHI of less than 150 is “unlikely to cause concern” (paragraph 3.10).

4.89 The HHI of [...] in 2017 suggests that the market for the supply of hazardous oily tank and interceptor waste collection services in the State is highly concentrated. Furthermore, the delta of [...] in 2017 far exceeds the upper bound of 250 below which a merger is unlikely to cause concern. Thus, the HHI calculations set out in Table 2



indicate that the Proposed Transaction may potentially raise competition concerns in the supply of hazardous oily tank and interceptor waste collection services in the State. This does not, however, mean that the Proposed Transaction will result in a substantial lessening of competition in the supply of hazardous oily tank and interceptor waste collection services in the State; rather, it means that the Commission should intensify its analysis of the likely competitive impact of the Proposed Transaction in this potential market.

Competitive Effects Analysis

- 4.90 Notwithstanding Enva and the Rilta Group's high combined market share ([75-80]% in 2017), for the reasons set out below, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of hazardous oily tank and interceptor waste collection services in the State.
- 4.91 There are a large number of competitors to Enva and the Rilta Group currently active in the supply of hazardous oily tank and interceptor waste collection services in the State. As illustrated in Table 3 above, there were six competitors (i.e., McBreen Environmental, Lehane Environmental, AQS Environmental Solutions, Super Drain, Complete Environmental Services and Thorntons Recycling) to the notifying parties with market shares in excess of [0-5]% in the State in 2017. These six competitors increased their combined market share from [10-15]% in 2013 to [15-20]% in 2017.
- 4.92 Some of these collectors have grown considerably over the period from 2013 to 2017. For example, McBreen Environmental increased its market share from [0-5]% to [0-5]% between 2013 and 2017. AQS Environmental Solutions increased its market share from [0-5]% to [0-5]% over the same period. The fact that some competitors have been able to grow their market share suggests that there may not be barriers to expansion in the supply of hazardous oily tank and interceptor waste collection services in the State.
- 4.93 During the course of its review of the Proposed Transaction, the Commission contacted a wide range of customers (e.g., motor fuel service station operators) of the notifying parties in the supply of hazardous oily tank and interceptor waste collection services in the State. Some customers informed the Commission that they frequently use tenders to select their preferred supplier of hazardous oily tank and interceptor waste collection services in the State. In some instances, competitors of the notifying parties have won tenders at the expense of Enva and the Rilta Group.
- 4.94 Furthermore, a number of customers listed suppliers such as McBreen Environmental, Super Drain and Complete Environmental Services as credible alternatives to the notifying parties in the supply of hazardous oily tank and interceptor waste collection services in the State. Finally, a number of customers expressed the view to the Commission that they are more concerned about the likely impact of the Proposed Transaction in the potential market for the supply of hazardous oily tank and interceptor waste treatment services in the State rather than the likely impact in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State.



- 4.95 Following completion of the Proposed Transaction, the Commission considers that the merged entity will face a significant competitive constraint from a number of competitors in the supply of hazardous oily tank and interceptor waste collection services in the State.
- 4.96 In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in the supply of hazardous oily tank and interceptor waste collection services in the State.

Vertical Effects

- 4.97 The Commission also considered whether the Proposed Transaction would provide the vertically integrated merged entity with the ability and incentive to foreclose its rivals in the supply of hazardous oily tank and interceptor waste collection services in the State.
- 4.98 The Commission considers that the Proposed Transaction will not provide the vertically integrated merged entity with the ability and incentive to foreclose its rivals in the supply of hazardous oily tank and interceptor waste collection services in the State. As will be discussed in detail below, following completion of the Proposed Transaction, rival suppliers of hazardous oily tank and interceptor waste collection services in the State will be able to send hazardous oily tank and interceptor waste to the purchaser of the Divestment Package (as defined in the binding proposals submitted by Enva to the Commission on 19 December 2018) for treatment. This is discussed in detail below.

(x) The Supply of Hazardous Oily Tank and Interceptor Waste Treatment Services in the State

- 4.99 In a submission to the Commission dated 22 October 2018, the notifying parties described the process of treating hazardous oily tank and interceptor waste as follows: *“it involves a standard, simple separation of the oil, water and solids largely by gravity separation in tanks. The material is allowed to settle in the tank and the oil floats to the top, solids sink to the bottom, and the water fraction settles in the middle. The water can be decanted off in a simple process, and the oil retained for recovery.”*

Market Structure

- 4.100 Enva operates four EPA-licensed facilities in the State, with two treating hazardous oily tank and interceptor waste, whereas the Rilta Group operates one EPA-licensed facility that treats hazardous oily tank and interceptor waste. There are currently no other treatment facilities in the State for hazardous oily tank and interceptor waste. Thus, the Proposed Transaction is a two-to-one merger in the supply of hazardous oily tank and interceptor waste treatment services in the State. A two-to-one merger which leads to a monopoly in the supply of hazardous oily tank and interceptor waste treatment services in the State is likely to lead to a substantial lessening of competition, unless there are strong mitigating factors.

Competitive Effects Analysis



- 4.101 In this section, the Commission examines the competitive effects of the Proposed Transaction in the potential market for the supply of hazardous oily tank and interceptor waste treatment services in the State.

Views of the Notifying Parties

- 4.102 In a submission to the Commission dated 3 August 2018, the notifying parties state the following:

“The merged entity will face a range of significant competitive constraints post-transaction including the following: (1) alternatives already exist for tank and interceptor waste as the merging parties’ combined tonnage is far less than the tonnage produced; (2) the merged entity will need to keep existing third-party tank and interceptor waste which is required as part of overall treatment and oil processes; (3) third party waste collectors can export tank and interceptor waste to NI, UK or Europe by simple bulking up process; alternatively they can install basic infrastructure on their sites and transport liquid and bulk solids for disposal (subject to licensing); (4) there are existing EPA licenced facilities which could accept, store and export tank and interceptor waste should prices make this attractive; (5) there are existing waste companies (Indaver) who are currently exporting tank and interceptor waste; and (6) there are sites that are permitted by the local authority to accept tank and interceptor waste.”

Views of the Commission

- 4.103 Assessing the competitive effects of the Proposed Transaction requires the identification of any relevant theories of harm (i.e., how the Proposed Transaction could result in a substantial lessening of competition) and an analysis of those theories of harm through an evaluation of the available evidence.
- 4.104 The Commission focused on two theories of harm as part of its assessment of the likely competitive impact of the Proposed Transaction in the potential market for the supply of hazardous oily tank and interceptor waste treatment services in the State: unilateral effects and vertical effects.

Unilateral Effects

- 4.105 Unilateral effects, as explained in paragraph 4.8 of the Commission’s “*Guidelines for Merger Analysis*”, occur when “a merger results in the merged entity having the ability and the incentive to raise prices on its own initiative and without coordinating with its competitors.”
- 4.106 In considering the likelihood of unilateral effects occurring following implementation of the Proposed Transaction, the Commission assessed a number of factors including barriers to entry and/or expansion.



Views of Third Parties

- 4.107 A number of competing collectors of hazardous oily tank and interceptor waste contacted by the Commission raised concerns about the likely competitive impact of the Proposed Transaction in the supply of hazardous oily tank and interceptor waste treatment services in the State.⁵¹ Most competing collectors informed the Commission that they play the notifying parties off against each other when negotiating treatment prices for hazardous oily tank and interceptor waste.⁵²
- 4.108 Competing collectors expressed the view to the Commission that the Proposed Transaction would lead to an increase in the price of treating hazardous oily tank and interceptor waste in the State. Finally, competing collectors expressed a concern that the Proposed Transaction will provide the merged entity with both the ability and incentive to foreclose competing collectors in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State.

Competitive Constraints

- 4.109 The O'Toole Report #1 argues that the merged entity will not have to ability to raise prices for the treatment of hazardous oily tank and interceptor waste because for competing collectors *“there are other significant, and credible, suppliers of hazardous waste processing present.”* The notifying parties identified three potential alternative sources of supply and/or channels through which hazardous oily tank and interceptor waste can be treated thereby making any price rise by the merged entity unsustainable following completion of the Proposed Transaction. Each of the three potential alternatives to the treatment facilities of Enva and the Rilta Group are considered in turn.

Treatment Facilities in Northern Ireland

- 4.110 The Commission contacted a number of Northern Ireland-based hazardous waste service providers. These service providers provide very limited, if any, competition to Enva and the Rilta Group in the supply of hazardous oily tank and interceptor waste treatment services in the State. This reflects the cost and difficulty of exporting hazardous oily tank and interceptor waste to Northern Ireland for treatment.
- 4.111 As explained in paragraphs 2.18-2.20 above, a Transfrontier Shipment (TFS) permit is required in order to export hazardous waste from the State to Northern Ireland. Some waste operators in Northern Ireland expressed the view that this is a costly process. Irish Waste Services Limited, for example, expressed the view to the Commission that the requirement for a TFS permit means that exports are only viable for large pre-planned movements of hazardous waste. The TFS permit requires details of the exact nature of the hazardous waste to be exported which results in testing during and after shipment. The NTFSO in the State informed the Commission that there is a *“statutory*

⁵¹ Collectors are not only competitors of Enva and the Rilta Group in the collection of hazardous oily tank and interceptor waste, but also customers of Enva and/or the Rilta Group for the treatment of hazardous oily tank and interceptor waste.

⁵² Information provided to the Commission by the notifying parties indicates a considerable degree of switching by some collectors between Enva and the Rilta Group between 2016 and 2017 for the treatment of hazardous oily tank and interceptor waste. This is evidence that collectors can negotiate better treatment prices from Enva and the Rilta Group because they can credibly threaten to switch from one to the other.



time line of 6 weeks within which consent must be either granted or refused. Shipments cannot take place until approval has been received.”

- 4.112 During the course of its review of the Proposed Transaction, the Commission found no evidence of competing collectors in the State exporting hazardous oily tank and interceptor waste to Northern Ireland (or outside the island of Ireland) for treatment. All Northern Ireland-based hazardous waste service providers contacted by the Commission indicated that they have never treated hazardous oily tank and interceptor waste originating from waste producers located in the State.

De Novo or Greenfield Entry

- 4.113 The second alternative advanced by the notifying parties to which a competing collector might turn if the merged entity raised its treatment prices following completion of the Proposed Transaction is an entrant that builds a new hazardous oily tank and interceptor waste treatment facility. When assessing this argument, a distinction needs to be made between an existing EPA-licensed facility, that may already be licensed to treat hazardous oily tank and interceptor waste, adding a treatment capability to its existing operation (i.e., expansion by an incumbent), which is considered in the next section, and a new unlicensed entrant building a facility to treat hazardous oily tank and interceptor waste (*de novo* or greenfield entry).
- 4.114 In terms of *de novo* or greenfield entry into the treatment of hazardous oily tank and interceptor waste in the State, information provided to the Commission by third parties indicates that the likely time span for entry and the associated costs are substantial.⁵³
- 4.115 Irrespective of the cost and timeliness of entry, whether *de novo* or expansion by an incumbent, the notifying parties cited no recent example of entry into the supply of hazardous oily tank and interceptor waste treatment services in the State. Furthermore, no third party contacted by the Commission expressed any intention to enter the supply of hazardous oily tank and interceptor waste treatment services in the State over the next two years.
- 4.116 As set out in paragraphs 6.5-6.10 of the Commission’s “*Guidelines for Merger Analysis*”, entry must be timely, likely and sufficient to provide an effective competitive constraint that will prevent a substantial lessening of competition following completion of the Proposed Transaction. After careful examination of the evidence, the Commission considers that it is unlikely that entry will be timely or likely to constrain the merged entity from raising prices (or otherwise harming competition) in the supply of hazardous oily tank and interceptor waste treatment services in the State.

Expansion by EPA-licensed Facilities

⁵³ One third party estimated a time horizon of three to five years and a capital expenditure cost of approximately €3-€5 million. A number of third parties expressed the view to the Commission that it can take a long time to obtain a licence from the EPA to operate a hazardous waste treatment facility in the State. The EPA informed the Commission that it can take approximately 9-12 months to process an application to operate a hazardous waste treatment facility in the State. Planning permission is also required to establish a greenfield hazardous waste treatment facility in the State.



- 4.117 Notwithstanding the fact that Enva and the Rilta Group are currently the only two providers of hazardous oily tank and interceptor waste treatment services in the State, the notifying parties argue that there are a number of facilities in the State that are licensed by the EPA to handle hazardous oily tank and interceptor waste, but currently do not provide treatment services.⁵⁴ These EPA license holders are considered by Enva to be “*significant and credible*”.
- 4.118 Apart from the fact that these facilities hold an EPA license, the notifying parties provided no evidence to the Commission that these entities are currently active in the treatment of hazardous oily tank and interceptor waste in the State. No collector or waste producer contacted by the Commission listed any of these EPA-licensed facilities as a credible alternative to the notifying parties for the treatment of hazardous oily tank and interceptor waste in the State.
- 4.119 Furthermore, the Commission contacted a number of these EPA-licensed facilities, all of which confirmed that they do not currently (nor have any intention in the future) collect or treat hazardous oily tank and interceptor waste in the State. The Commission therefore considers that these facilities will not provide a competitive constraint on the merged entity in the supply of hazardous oily tank and interceptor waste treatment services in the State following completion of the Proposed Transaction.

Conclusion on Unilateral Effects

- 4.120 The Commission was concerned that the Proposed Transaction may provide the merged entity with the incentive and ability to unilaterally increase the price (or otherwise harm competition) of hazardous oily tank and interceptor waste treatment services in the State. This view is based on the following evidence:
- The Proposed Transaction is a two-to-one merger in the supply of hazardous oily tank and interceptor waste treatment services in the State;
 - Evidence from a variety of sources indicates that Enva and the Rilta Group are close competitors in the supply of hazardous oily tank and interceptor waste treatment services in the State;
 - There is no evidence of collectors currently (or in the recent past) exporting hazardous oily tank and interceptor waste for treatment and the Commission has found no evidence that export (or the threat of export) will constrain the merged entity from raising prices (or otherwise harming competition) in the supply of hazardous oily tank and interceptor waste treatment services in the State; and
 - It is unlikely new entry or expansion will be timely or likely to constrain the merged entity from raising prices (or otherwise harming competition) in the supply of hazardous oily tank and interceptor waste treatment services in the State.

⁵⁴ In response to the Phase 1 RFI, Enva listed the following entities: [...].



Vertical Effects

- 4.121 Both Enva and the Rilta Group are vertically integrated in that they are involved in the collection of hazardous oily tank and interceptor waste as well as the subsequent treatment of this waste at their facilities. Furthermore, Enva and the Rilta Group are the only two vertically integrated firms in the State in respect of hazardous oily tank and interceptor waste.
- 4.122 Following completion of the Proposed Transaction, there will be only one vertically integrated firm active in the State, thus giving rise to vertical competition concerns, whereby the merged entity may have the ability and incentive to raise rivals' costs through input foreclosure.⁵⁵ The merged entity may be able to leverage its market power in the upstream market for the supply of hazardous oily tank and interceptor waste treatment services in the State to adversely impact its downstream competitors in the market for the supply of hazardous oily tank and interceptor waste collection services in the State. To be successful, the merged entity must have both the ability and incentive to adopt such a foreclosure strategy. For there to be a substantial lessening of competition, this conduct must lead to a rise in prices to customers.

Partial v Total Input Foreclosure

- 4.123 As noted in paragraph 5.10 of the Commission's "*Guidelines for Merger Analysis*", input foreclosure can be either total or partial.
- 4.124 Both Enva and the Rilta Group accept hazardous oily tank and interceptor waste from competing collectors for treatment. In 2017, [...] % of the total combined volume of hazardous oily tank and interceptor waste treated by Enva and the Rilta Group in the State was accounted for by waste collected by competitors of the notifying parties.
- 4.125 While there are numerous collectors of hazardous oily tank and interceptor waste currently active in the State (see Table 3 above), only Enva and the Rilta Group provide treatment services for this type of hazardous waste in the State. Thus, the theory of harm assessed by the Commission is partial input foreclosure: the possibility that the merged entity will raise its treatment prices for hazardous oily tank and interceptor waste or in some other way disadvantage collectors that compete with it in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State. This could increase rivals' costs in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State which could in turn lead to increased prices to consumers.
- 4.126 As noted in paragraph 5.10 of the Commission's "*Guidelines for Merger Analysis*", a necessary condition for the merged entity to be able to engage in partial input foreclosure following completion of the Proposed Transaction is to possess market power in the potential market for the supply of hazardous oily tank and interceptor waste treatment services in the State. As detailed above, the merged entity will be the only supplier of such treatment services in the State following completion of the Proposed Transaction.

⁵⁵ See paragraphs 5.10 to 5.13 of the Commission's "*Guidelines for Merger Analysis*" for a discussion of input foreclosure.



- 4.127 The ability to foreclose is enhanced if the input – treatment services for hazardous oily tank and interceptor waste – constitutes “a significant proportion of the downstream competitor’s costs of production”⁵⁶ and if it “cannot be readily substituted with other inputs”.⁵⁷ Both conditions appear to be satisfied in the case of hazardous oily tank and interceptor waste treatment services. Information provided by the notifying parties to the Commission indicates that for the merged entity as a whole the cost of treatment accounts for around [...] % of the total cost of supplying collection services for hazardous oily tank and interceptor waste in the State. Treatment is a critical input into the collection of hazardous oily tank and interceptor waste. Such hazardous waste must, by law, be treated once it has been collected from a waste producer. Furthermore, there is a danger of reputational damage should a customer or collector illegally dispose of hazardous oily tank and interceptor waste.
- 4.128 The Commission must consider whether, following completion of the Proposed Transaction, the merged entity will raise prices (and/or lower the quality of the treatment service it provides to rival collectors) in the treatment market for hazardous oily tank and interceptor waste in the State, a potential market in which it has market power. As a result, rivals to the merged entity in the potential collection market for hazardous oily tank and interceptor waste in the State would experience increased costs. Given the significance of treatment costs in the overall collection price and the fact that treatment is a critical component, rival collectors would have little alternative but to raise prices to customers (i.e., waste producers). Indeed, a number of third parties contacted by the Commission expressed the view that the Proposed Transaction would lead to increased treatment costs that would be passed on to customers by rival collectors of hazardous oily tank and interceptor waste.
- 4.129 The Commission considers that the demand for hazardous oily tank and interceptor waste treatment services is likely to be relatively unresponsive (i.e., inelastic) to price changes. As noted above, there is no alternative to treatment in an EPA-licensed facility except illegal disposal by the waste producer and/or collector which could result in adverse legal consequences and reputational damage. Hence, there is likely to be little or no decline in demand for treatment services in response to a price rise.
- 4.130 The test of whether or not the merged entity has an incentive to partially foreclose depends on whether or not it is profitable to do so. There are two factors that determine whether the merged entity has an incentive to partially input foreclose. First, the loss in profits from the decline in demand for treatment services for hazardous oily tank and interceptor waste supplied to competing collectors compared to the increased profits resulting from increased collection volumes at the expense of downstream rival collectors. Information provided by the notifying parties to the Commission indicates that the annual gross margins generated by Enva in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State were [...] than the annual gross margins generated by Enva in the treatment market in the State over the period 2013-2017.
- 4.131 The incentive to partially foreclose will vary by how much the downstream operation of the merged entity can be expected to benefit in terms of the degree of switching

⁵⁶ See paragraph 5.11 of the Commission’s “Guidelines for Merger Analysis”.

⁵⁷ See paragraph 5.11 of the Commission’s “Guidelines for Merger Analysis”.



by customers in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State. Information provided by the notifying parties to the Commission indicates that the cleaning and collection of hazardous oily tank and interceptor waste tends to be for relatively short periods. The Rilta Group informed the Commission that the *“tank and interceptor cleaning business is not typically contracted and is carried out on an ad hoc price agreement basis,”* while Enva informed the Commission that typically there *“are two types of contracts for tank & interceptor cleaning services being either a one off tank clean or in a minority of cases repeat cleans which may be annual or multi annual.”* Furthermore, collection services for hazardous oily tank and interceptor waste appear relatively substitutable across different collectors. Thus, the merged entity could potentially acquire market share in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State as a result of a partial input foreclosure strategy.

- 4.132 The Commission, however, does not have any information concerning the degree to which the merged entity would increase collection volumes at the expense of rivals in response to a partial input foreclosure strategy in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State. Without information on diversion ratios,⁵⁸ it is not possible for the Commission to reach a definitive conclusion on incentive. However, given the [...] annual gross profit margins generated by Enva in the supply of hazardous oily tank and interceptor waste collection services in the State over the period 2013-2017, it is likely that the merged entity will have the incentive to engage in a partial input foreclosure strategy following completion of the Proposed Transaction.
- 4.133 The second factor that determines whether the merged entity will have an incentive to partially input foreclose is that if rivals’ costs are raised this will put pressure on collectors of hazardous oily tank and interceptor waste to raise prices. This will, in turn, allow the merged entity to raise prices in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State. Given that the merged entity accounted for [75-80]% of this potential market in 2017, it is likely that the merged entity will have an incentive to raise prices. The Commission therefore considers that, on balance, the merged entity is likely to have an incentive to raise prices in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State.

Conclusion on Vertical Effects

- 4.134 The Commission is concerned that the Proposed Transaction will provide the merged entity with the ability and incentive to partially input foreclose its rivals in the potential market for the supply of hazardous oily tank and interceptor waste collection services in the State.

Proposals Submitted by Enva

- 4.135 On 19 December 2018, Enva submitted to the Commission formal proposals under section 20(3) of the 2002 Act to divest its EPA-licensed facility located at JFK Industrial

⁵⁸ The diversion ratio measures the proportion of customers that switch away from a product to an alternative product following a price increase.



Estate, John F Kennedy Road, Naas Road, Dublin 12 (“ the JFK Site”). The Commission is of the view that the proposals are sufficient to address the competition concerns identified by the Commission in the potential market for the supply of hazardous oily tank and interceptor waste treatment services in the State. In accordance with section 20(3) and section 26(1) and section 26(4) of the 2002 Act, the proposals became commitments binding upon Enva.

- 4.136 Enva currently treats hazardous oily tank and interceptor waste in the JFK Site. The Commission considers that the divestment of the JFK Site (including all property, plant and equipment used for the storage and treatment of hazardous oily tank and interceptor waste) by Enva will retain the pre-Proposed Transaction competitive landscape such that the Proposed Transaction will no longer have any competitive impact on the potential market for the supply of hazardous oily tank and interceptor waste treatment services in the State.

(xi) The Supply of Hazardous Waste Lubricant Oil Collection Services in the State

- 4.137 In a submission to the Commission dated 22 October 2018, the notifying parties provide the following description of waste lubricant oil (which they also refer to as used lubricant oil or ULO): *“ULO is mainly generated from the servicing of vehicles with internal combustion engines (i.e. electric vehicles generate no ULO) typically comprising of private cars, vans, goods vehicles, agricultural machinery, buses and trains. There are a range of garages both private and commercial that service these vehicles and in so doing generate ULO for collection. The range of ULO producers is wide with the number of ULO producers in Ireland amounting to several thousand.”*
- 4.138 Both Enva and the Rilta Group collect hazardous waste lubricant oil in the State which they re-process into fuel oil.
- 4.139 The collection price for waste lubricant oil tends to vary inversely with the price of virgin oil with which re-processed fuel oil competes.⁵⁹ The collection price also varies with the quality of the waste lubricant oil. The collection price charged by Enva and the Rilta Group also includes the cost of treatment.
- 4.140 The O’Toole Report #1 notes that *“the collection of waste lubricant oil is most efficiently performed by a standard tanker as opposed to by a vacuum tanker with suction facilities (as used for the collection of, for example, [...]oily water).”*

Market Structure

- 4.141 Enva and the Rilta Group are the only two firms with facilities in the State that treat hazardous waste lubricant oil. The Phase 1 RFI asked the notifying parties to break out the total tonnage of hazardous waste lubricant oil delivered by competing collectors to the facilities of Enva and the Rilta Group for treatment. Using this information and the total volume of hazardous waste lubricant oil collected and treated by Enva and the Rilta Group in the State provides a basis for estimating market shares. The results are presented in Table 4 below.

⁵⁹ Enva provided the following explanation to the Commission: [...]”



Table 4: Market Shares in the Supply of Hazardous Waste Lubricant Oil Collection Services, by Tonnage, 2013 & 2017, the State

Firm	2013	2017
Enva	[70-75]	[60-65]
The Rilta Group	[20-25]	[30-35]
Lubricant Direct	[0-5]	[0-5]
Thorntons Recycling	[0-5]	[0-5]
Lehane Environmental	[0-5]	[0-5]
AQS Environmental Solutions	-	[0-5]
Blockbuster	-	[0-5]
Greenday	[0-5]	[0-5]
Indaver	[0-5]	[0-5]
Others	[0-5]	[0-5]
Total	100%	100%
Pre-merger HHI	[...]	[...]
Post-merger HHI	[...]	[...]
Delta	[...]	[...]

Source: The Commission based on information provided by Enva and the Rilta Group.

- 4.142 Table 4 indicates that Enva and the Rilta Group are by far the two biggest suppliers of hazardous waste lubricant oil collection services in the State, with a combined market share of [95-100]% in 2017. There is a relatively long tail of smaller competitors, with market shares that never exceed [0-5]% in 2017.
- 4.143 The potential market for the supply of hazardous waste lubricant oil collection services in the State is highly concentrated. Furthermore, the delta of [...] in 2017 far exceeds the upper bound of 250 below which a merger is unlikely to cause concern. Thus, the HHI calculations set out in Table 4 indicate that the Proposed Transaction may potentially raise competition concerns in the supply of hazardous waste lubricant oil collection services in the State. This does not, in itself, mean that the Proposed Transaction will result in a substantial lessening of competition in the supply of hazardous waste lubricant oil collection services in the State. This, rather, means that the Commission should intensify its analysis of the likely competitive impact of the Proposed Transaction in this potential market.

Competitive Effects Analysis

- 4.144 In this section, the Commission examines the competitive effects of the Proposed Transaction in the potential market for the supply of hazardous waste lubricant oil collection services in the State.

Views of the Notifying Parties

- 4.145 In a submission to the Commission dated 22 October 2018, the notifying parties state the following:

“There are a very large number (>60) of collectors permitted to collect ULO with the numbers of collectors varying slightly from county to county. (e.g. 67 in Dublin city, 65 in Cork, 64 in Co Clare, 65 in Longford, 65 in Donegal etc.). These



participants can collect ULO either in drums/other containers using a curtain sider vehicle or using a tanker.”

“The economics of collection from the waste producer is tightly linked to the value of ULO (which in turn is linked to the value of crude oil prices) with collection being charged to the waste producer when ULO prices are low and conversely purchased from the ULO producer when ULO prices are high. In the current ‘lower’ (but apparently increasing) oil price environment, collection of ULO is a cost to the waste producers both in Ireland but also across the UK. However, this has not always been the case. ... When oil prices increased in the past this attracted new entrants (e.g. Hi-Volt in 2013-14) who entered the market and captured market share very quickly given the low barriers to entry. Should the merged entity seek to increase collection charges it will only serve to encourage other collectors to quickly re-emerge, especially in the current rising oil price environment.”

Views of the Commission

- 4.146 The Commission focused on two theories of harm as part of its assessment of the likely competitive impact of the Proposed Transaction in the potential market for the supply of hazardous waste lubricant oil collection services in the State: unilateral effects and vertical effects.

Unilateral Effects

- 4.147 In considering the likelihood of unilateral effects following completion of the Proposed Transaction, the Commission assessed a number of factors including to what extent, if any, the merged entity will face competitive constraints in the potential market for the supply of hazardous waste lubricant oil collection services in the State.

Competitive Constraints

- 4.148 In submissions to the Commission, the notifying parties identified a number of potential alternative sources of supply and/or channels through which hazardous waste lubricant oil can be collected thereby making any price rise by the merged entity unsustainable. Each of these potential alternatives to the merged entity are considered in turn.

Collectors in Northern Ireland

- 4.149 The O’Toole Report #1 expressed the following view: *“Northern Ireland-based hazardous waste facilities (namely, A Thompson Recycled Oil, Irish Waste, MacWaste Environmental Services and McQuillan Environcare) collect waste lubricant oil.”*
- 4.150 The Commission found no evidence to indicate that collectors based in Northern Ireland supply hazardous waste lubricant oil collection services to customers in the State. None of the customers contacted by the Commission has ever used the services



of collectors based in Northern Ireland nor did they consider such collectors a feasible alternative to the merged entity. Furthermore, the Commission's survey of collectors based in Northern Ireland found that none currently (or in the past) provide hazardous waste lubricant oil collection services in the State.

Competitors of the Merged Entity

- 4.151 The O'Toole Report #1 expressed the following view: *"a significant number of hazardous waste operators in Ireland either currently collect and/or would be available to collect waste lubricant oils from businesses, e.g. Auto Waste Ireland (Navan, Co. Meath), Complete Environmental Services, Hi-Volt, KMK Metals Recycling, Safety Kleen, Soltec, SRCL/Stericycle, Thorntons Recycling and Veolia. At least one of the above competitors, namely, Hi-Volt...has in the relatively recent past bulked up significant collections of waste lubricant oil and exported same to continental Europe."*
- 4.152 Notwithstanding the views of the notifying parties that there are a significant number of competitors to the merged entity in the State, the evidence suggests that these competitors are unlikely to be able to exert a competitive constraint on the merged entity in the potential market for the supply of hazardous waste lubricant oil collection services in the State. There are three reasons for this view.
- 4.153 First, as illustrated in Table 4 above, the combined share of supply of the competitors to the merged entity was only [0-5]% in the State in 2017, and no competitor had a share of supply in excess of [0-5]%. The share of supply figures for 2013 indicate that no competitor has grown its share in the potential market for the supply of hazardous waste lubricant oil collection services in the State. Furthermore, during the period from 2013 to 2017, Enva has lost market share almost exclusively to the Rilta Group.
- 4.154 Second, all customers surveyed by the Commission indicated that they currently use the collection services of either Enva or the Rilta Group. When asked to list alternative collectors of hazardous waste lubricant oil, only two customers cited an alternative, namely Lehane Environmental. No other alternative collector was listed by a customer. Lehane Environmental informed the Commission that it collects very small volumes of hazardous waste lubricant oil in the State: [...] tonnes in 2015; [...] tonnes in 2016; and [...] tonnes in 2017. By way of comparison, Enva collected [...] tonnes of hazardous waste lubricant oil in the State in 2017.
- 4.155 Third, many of the firms cited by the notifying parties as competitors in the supply of hazardous waste lubricant oil collection services in the State informed the Commission that they do not currently (and have never in the past) collect hazardous waste lubricant oil.

Entry of Hi-Volt in 2014

- 4.156 As noted above, the notifying parties cited Hi-Volt as a recent example of a new entrant that captured a share of the potential market for the supply of hazardous waste lubricant oil collection services in the State.
- 4.157 Hi-Volt informed the Commission that it started collecting (using one tanker) hazardous waste lubricant oil from customers (primarily garages) in the State in 2014.



This was in response to the high price of oil at the time. Hi-Volt informed the Commission that it collected between 1.5-2 million litres of hazardous waste lubricant oil per annum at this time. Hi-Volt informed the Commission that it stopped collecting hazardous waste lubricant oil in the State in October 2015 in response to a decline in the price of oil.

- 4.158 Hi-Volt informed the Commission that before it started collecting hazardous waste lubricant oil in the State in 2014, both Enva and the Rilta Group charged customers for the collection of hazardous waste lubricant oil. Hi-Volt informed the Commission that when it started collecting hazardous waste lubricant oil in the State in 2014, Hi-Volt paid customers for their hazardous waste lubricant oil. Hi-Volt informed the Commission that as a result, both Enva and the Rilta Group also began to pay customers for collecting their hazardous waste lubricant oil.
- 4.159 The notifying parties argue that the entry of Hi-Volt in 2014 demonstrates that barriers to entry are low in the collection of hazardous waste lubricant oil in the State and should the merged entity increase collection prices, *“it will only serve to encourage other collectors to quickly re-emerge, especially in the current rising oil price environment.”*
- 4.160 The Commission does not consider that the entry of Hi-Volt in 2014 demonstrates that entry will be timely, likely and sufficient to prevent a price rise by the merged entity in the collection of hazardous waste lubricant oil in the State. Instead, the Commission considers that the entry and subsequent exit of Hi-Volt in the collection of hazardous waste lubricant oil during the period 2014-2015 was in response to extremely variable changes in the price of oil.⁶⁰ The price of a barrel of oil increased from \$50 in January 2009 to in excess of \$100 in January 2014, before declining to a low of \$36 in February 2016.⁶¹ For a substantial lessening of competition to occur price increases would be of a much lower magnitude than the 100% increase in oil prices experienced between 2009-2014 and hence the response from collectors of hazardous waste lubricant oil would most likely be very muted.
- 4.161 The Commission also considers it significant that when Hi-Volt entered in response to the high and rising price of oil, none of the other firms cited by the notifying parties as competitors appear to have expanded their activities in the collection of hazardous waste lubricant oil in the State.
- 4.162 In conclusion, the Commission does not consider that existing or potential competitors will exert a competitive constraint on the merged entity in the potential market for the supply of hazardous waste lubricant oil collection services in the State following completion of the Proposed Transaction.

Using Waste Lubricant Oil as a Heat Source

- 4.163 The notifying parties argue that if the merged entity were to raise the price of hazardous waste lubricant oil collection services following completion of the Proposed Transaction, some customers would in response use hazardous waste lubricant oil as

⁶⁰ As noted by the notifying parties in a submission to the Commission, *“The economics of collection from the waste producer is tightly linked to the value of ULO (which in turn is linked to the value of crude oil prices)...”*

⁶¹ <https://www.macrotrends.net/1369/crude-oil-price-history-chart>



a fuel for heating purposes and dispense with the need for a collection service. The notifying parties argue that such a response would be a disincentive for the merged entity to raise its collection prices in the State following completion of the Proposed Transaction.

- 4.164 The O'Toole Report #1 expressed the following view: *“a significant proportion of waste lubricant oil (perhaps between one-quarter and one-third) that is generated in Ireland is apparently burned in garages or sold by garages for burning elsewhere. ... This burning of waste lubricant oil is strictly speaking illegal, although in theory a licence is attainable it may be subject to very stringent and relatively expensive licensing conditions. As such, for very many small customers (e.g. small repair garages), there is an obvious (albeit most likely illegal) alternative to possibly paying for the collection of the waste lubricant oil and/or paying heating costs.”*
- 4.165 The EPA informed the Commission that it is illegal to burn hazardous waste lubricant oil in the State and that the enforcement of regulations prohibiting the illegal burning of hazardous waste lubricant oil is a matter for local authorities. Given that it is illegal to burn hazardous waste lubricant oil in the State, in this case the Commission is of the view that it does not need to consider whether using hazardous waste lubricant oil as a fuel for heating purposes is likely to act as a competitive constraint on the merged entity in the potential market for the supply of hazardous waste lubricant oil collection services in the State.

Conclusion on Unilateral Effects

- 4.166 The Commission was concerned that the Proposed Transaction may provide the merged entity with the incentive and ability to unilaterally increase the price (or otherwise harm competition) of hazardous waste lubricant oil collection services in the State. This view is based on the following evidence:
- The merged entity will have a market share of [95-100]% in the supply of hazardous waste lubricant oil collection services in the State;
 - Evidence from a variety of sources indicates that Enva and the Rilta Group are each other's closest competitor in the supply of hazardous waste lubricant oil collection services in the State;
 - Competing collectors of hazardous waste lubricant oil in the State have been unable to grow their market shares over the period 2013-2017;
 - Other than Hi-Volt's entry in 2014 which was in response to the very high oil prices and only lasted until October 2015, there is no recent example of successful entry or any evidence of plans by any firms to enter or expand in the potential market for the supply of hazardous waste lubricant oil collection services in the State; and
 - The option of illegally using hazardous waste lubricant oil as a fuel for heating purposes is unlikely to act as a competitive constraint on the merged entity in the potential market for the supply of hazardous waste lubricant oil collection services in the State.



Proposals Submitted by Enva

- 4.167 On 19 December 2018, Enva submitted to the Commission formal proposals under section 20(3) of the 2002 Act to divest the JFK Site and to accept hazardous waste lubricant oil from any third party, including the purchaser of the JFK Site. The Commission is of the view that the proposals are sufficient to address the competition concerns identified by the Commission in the potential market for the supply of hazardous waste lubricant oil collection services in the State. In accordance with section 20(3) and section 26(1) and section 26(4) of the 2002 Act, the proposals became commitments binding upon Enva.
- 4.168 The Commission considers that the divestment of the JFK Site⁶² by Enva will ensure that the purchaser of the JFK Site will be able to store any hazardous waste lubricant oil collected by it in the State. The Commission also considers that the proposal by Enva to accept hazardous waste lubricant oil from any third party, including the purchaser of the JFK Site, will ensure that any entity that currently collects (or is considering collecting) hazardous waste lubricant oil in the State will have the option of disposing of its hazardous waste lubricant oil with Enva following completion of the Proposed Transaction. [...] The Commission notes that the Rilta Group itself collected [...] tonnes of hazardous waste lubricant oil in the State in 2017.
- 4.169 The Commission considers that the proposals by Enva will retain the pre-Proposed Transaction competitive landscape such that the Proposed Transaction will no longer have any competitive impact on the potential market for the supply of hazardous waste lubricant oil collection services in the State.

Vertical Effects

- 4.170 The Commission also considered whether the Proposed Transaction would provide the vertically integrated merged entity with the ability and incentive to foreclose its rivals in the supply of hazardous waste lubricant oil collection services in the State.
- 4.171 The Commission considers that the Proposed Transaction will not provide the vertically integrated merged entity with the ability and incentive to foreclose its rivals in the supply of hazardous waste lubricant oil collection services in the State. As noted above, under the terms of the proposals submitted to the Commission by Enva, Enva will accept hazardous waste lubricant oil from rival suppliers of hazardous waste lubricant oil collection services in the State following completion of the Proposed Transaction.

(xii) The Supply of Hazardous Waste Lubricant Oil Treatment Services in the State

- 4.172 In a submission to the Commission, the notifying parties state the following: “ULO can be disposed by collectors in one of two ways: (a) taken immediately to a site that can process ULO (e.g. produce a saleable product or provide an energy source); or (b) acceptance at a site in Ireland for interim storage pending transfer to a treatment/processing facility in the Republic of Ireland, GB or Europe.”

⁶² Including, in particular, all property, plant and equipment used for the storage of hazardous waste lubricant oil.



4.173 The notifying parties operate the only facilities in the State that process hazardous waste lubricant oil into re-processed fuel oil. While [...] of Enva’s four facilities in the State are licensed by the EPA to treat hazardous waste lubricant oil, only Enva’s facility in [...] currently processes hazardous waste lubricant oil. The facility in [...] has a treatment capacity of [...] tonnes per annum and currently operates at [...]% capacity. The Rilta Group treats hazardous waste lubricant oil at its facility in Co. Dublin. It has a treatment capacity of [...] tonnes per annum and currently operates at [...]% capacity.

Market Structure

4.174 Table 5 below sets out market shares in the potential market for the supply of hazardous waste lubricant oil treatment services in the State.

Table 5: Market Shares in the Supply of Hazardous Waste Lubricant Oil Treatment Services, By Value & Volume, 2013-2017, the State

Firm	2013	2014	2015	2016	2017
Enva					
Volume (tonnes)	[70-75]%	[60-65]%	[70-75]%	[70-75]%	[65-70]%
Value (turnover in €)	[50-55]%	[50-55]%	[65-70]%	[60-65]%	[55-60]%
The Rilta Group					
Volume (tonnage)	[25-30]%	[35-40]%	[25-30]%	[25-30]%	[30-35]%
Value (turnover in €)	[45-50]%	[45-50]%	[30-35]%	[35-40]%	[40-45]%
Total	100%	100%	100%	100%	100%

Source: The Commission, based on information provided by Enva and the Rilta Group.

4.175 Irrespective of whether volume or value is used, Enva had the larger share of the potential market for the supply of hazardous waste lubricant oil treatment services in the State over the period 2013-2017. In 2017, Enva had a [55-60]% market share by value, with the remaining [40-45] accounted for by the Rilta Group.

4.176 There are currently no other treatment facilities in the State for hazardous waste lubricant oil. Thus, the Proposed Transaction is a two-to-one merger in the supply of hazardous waste lubricant oil treatment services in the State. A two-to-one merger which leads to a monopoly in the supply of hazardous waste lubricant oil treatment services in the State is likely to lead to a substantial lessening of competition, unless there are strong mitigating factors.

Competitive Effects Analysis

4.177 In this section, the Commission examines the competitive effects of the Proposed Transaction in the potential market for the supply of hazardous waste lubricant oil treatment services in the State.

Views of the Notifying Parties



- 4.178 In a submission to the Commission dated 3 August 2018, the notifying parties argued that the merged entity will face the following constraints on its ability to deal with third party collectors on worse terms than those offered pre-Proposed Transaction:

“(i) the ability of a collector switching to using a treatment facility outside of the State, (ii) the ability of the generators of the waste oil (garages) simply switching to burning the waste oil, (iii) the ability to supply waste oil to Indaver and Veolia for the manufacture of cement kiln fuel or export and (iv) the ability of garages or third party collectors to bring the waste oil materials directly to a range of sites that are licensed/permitted to accept these waste streams.”

- 4.179 As noted in paragraph 4.165 above, given that it is illegal to burn hazardous waste lubricant oil in the State, the Commission is of the view that it does not need to consider whether using hazardous waste lubricant oil as a fuel for heating purposes is likely to act as a competitive constraint on the merged entity in the potential market for the supply of hazardous waste lubricant oil treatment services in the State.

Views of the Commission

- 4.180 The Commission focused on two theories of harm as part of its assessment of the likely competitive impact of the Proposed Transaction in the potential market for the supply of hazardous waste lubricant oil treatment services in the State: unilateral effects and vertical effects.

Unilateral Effects

- 4.181 In considering the likelihood of unilateral effects, the Commission assessed a number of factors including possible competitive constraints that the merged entity may face following completion of the Proposed Transaction.

Competitive Constraints

- 4.182 The notifying parties identified a number of potential alternative channels through which hazardous waste lubricant oil can be treated thereby making any price rise by the merged entity following completion of the Proposed Transaction unsustainable. Each of these potential alternatives to the treatment facilities of Enva and the Rilta Group are considered in turn.

Treatment Facilities in Northern Ireland

- 4.183 The Commission contacted four Northern Ireland-based hazardous waste service providers. These service providers provide very limited, if any, competition to Enva and the Rilta Group in the supply of hazardous waste lubricant oil treatment services in the State. All four Northern Ireland-based hazardous waste service providers informed the Commission that they have never treated hazardous waste lubricant oil originating from waste producers located in the State. During the course of its review of the Proposed Transaction, the Commission found no evidence of competing collectors exporting hazardous waste lubricant oil to Northern Ireland for treatment.



De Novo or Greenfield Entry or Expansion

- 4.184 The second alternative to which a competing collector might turn if the merged entity raised its treatment prices following completion of the Proposed Transaction is an entrant that builds a new hazardous waste lubricant oil treatment facility. When assessing this argument, a distinction needs to be made between an existing EPA-licensed facility, that may already be licensed to treat hazardous waste lubricant oil, adding a treatment capability to its existing operation (i.e., expansion by an incumbent) and a new unlicensed entrant building a facility to treat hazardous waste lubricant oil (*de novo* or greenfield entry).
- 4.185 In terms of *de novo* or greenfield entry into the treatment of hazardous waste lubricant oil in the State, information provided to the Commission by third parties indicates that the likely time span for entry and the associated costs are substantial.⁶³
- 4.186 Irrespective of the cost of entry, whether *de novo* or expansion, the notifying parties cited no recent example of entry into the supply of hazardous waste lubricant oil treatment services in the State. Furthermore, no third party contacted by the Commission expressed any intention to enter the potential market for the supply of hazardous waste lubricant oil treatment services in the State over the next two years.
- 4.187 The Commission therefore considers that it is unlikely that entry will be timely or likely to constrain the merged entity from raising prices in the supply of hazardous waste lubricant oil treatment services in the State.

Bulking-up and Export

- 4.188 The notifying parties argue that a collector can bulk up hazardous waste lubricant oil in a transfer station before export to a treatment facility outside the State. The notifying parties cite the example of Hi-Volt which collected and bulked-up hazardous waste lubricant oil in the State in 2014 and 2015 before export to Germany for treatment. Enva informed the Commission that it imports hazardous waste lubricant oil from its facility in Northern Ireland for treatment in its facility in Portlaoise. The notifying parties argue that several firms in the State own and operate EPA-licensed facilities (e.g., Indaver, Hi-Volt, Veolia and Safety Kleen) which can be used to bulk-up hazardous waste lubricant oil before export for treatment.
- 4.189 The Commission contacted a number of third parties to ascertain their views on the feasibility of bulking-up and exporting hazardous waste lubricant oil. Most collectors contacted by the Commission do not currently (or have ever in the past) export hazardous waste lubricant oil for treatment. Furthermore, several collectors expressed the view to the Commission that the volume of hazardous waste lubricant oil collected was too low to justify bulking-up and export.⁶⁴

⁶³ One third party estimated a time horizon of approximately two years and a capital expenditure cost of approximately €2 million. A number of third parties expressed the view to the Commission that it can take a long time to obtain a licence from the EPA to operate a hazardous waste treatment facility in the State. The EPA informed the Commission that it can take approximately 9-12 months to process an application to operate a hazardous waste treatment facility in the State.

⁶⁴ This view is unsurprising since, as illustrated in Table 4 above, competitors to the notifying parties in the supply of hazardous waste lubricant oil collection services in the State had a combined market share of only 4.3% in 2017, and no competitor had a share of supply in excess of 1%.



Cement Kiln Fuel

4.190 The notifying parties argue that collectors can supply hazardous waste lubricant oil to Indaver and Veolia for the manufacture of cement kiln fuel. However, no third party contacted by the Commission (including both Indaver and Veolia) cited this option as a feasible alternative to the treatment facilities of Enva and the Rilta Group.

Conclusion on Unilateral Effects

4.191 The Commission is concerned that the Proposed Transaction may provide the merged entity with the incentive and ability to unilaterally increase the price of hazardous waste lubricant oil treatment services in the State (or otherwise harm competition). This view is based on the following evidence:

- The Proposed Transaction is a two-to-one merger in the supply of hazardous waste lubricant oil treatment services in the State;
- There is no evidence of third parties currently (or in the recent past) bulking-up and exporting hazardous waste lubricant for treatment and it is not clear that export (or the threat of export) will constrain the merged entity from raising prices in the supply of hazardous waste lubricant oil treatment services in the State (or otherwise harming competition); and
- It is highly unlikely new entry or expansion will be timely or likely to constrain the merged entity from raising prices (or otherwise harming competition) in the supply of hazardous waste lubricant oil treatment services in the State.

Vertical Effects

4.192 Both Enva and the Rilta Group are vertically integrated in that they are involved in the collection of hazardous waste lubricant oil as well as the subsequent treatment of this waste at their facilities. Furthermore, Enva and the Rilta Group are the only two vertically integrated firms in the State in respect of hazardous waste lubricant oil. Following completion of the Proposed Transaction, there will be only one vertically integrated firm active in the State, thus giving rise to vertical competition concerns, whereby the merged entity may have the ability and incentive to raise rivals costs through input foreclosure.

4.193 The merged entity may be able to leverage its market power in the upstream market for the supply of hazardous waste lubricant oil treatment services in the State to adversely impact its downstream competitors in the market for the supply of hazardous waste lubricant oil collection services in the State. To be successful, the merged entity must have both the ability and incentive to adopt such a foreclosure strategy. For there to be a substantial lessening of competition, this conduct must lead to harm to consumers, e.g., a likely rise in prices to customers.

Partial v Total Input Foreclosure

4.194 Both Enva and the Rilta Group accept hazardous waste lubricant oil from competing collectors for treatment. In 2017, only [...] % of the total combined volume of



hazardous waste lubricant oil treated by Enva and the Rilta Group in the State was accounted for by waste collected by competitors of the notifying parties.⁶⁵

- 4.195 Only Enva and the Rilta Group provide treatment services for hazardous waste lubricant oil in the State. Thus, the theory of harm assessed by the Commission is partial input foreclosure: the likelihood that the merged entity will raise its treatment prices for hazardous waste lubricant oil or in some other way disadvantage collectors that compete with it in the potential market for the supply of hazardous waste lubricant oil collection services in the State. This could increase rivals' costs in the potential market for the supply of hazardous waste lubricant oil collection services in the State which could in turn lead to increased prices to consumers.
- 4.196 A necessary condition for the merged entity to be able to engage in partial input foreclosure following completion of the Proposed Transaction is to possess market power in the potential market for the supply of hazardous waste lubricant oil treatment services in the State. As detailed above, the merged entity will be the only supplier of such treatment services in the State following completion of the Proposed Transaction.
- 4.197 As noted above, the ability to foreclose is enhanced if the input – i.e., treatment services for hazardous waste lubricant oil – constitutes “*a significant proportion of the downstream competitor’s costs of production*” and if it “*cannot be readily substituted with other inputs*”.⁶⁶ While the Commission does not have information on the former, treatment is a critical input into the collection of hazardous waste lubricant oil. Such hazardous waste must, by law, be treated once it has been collected from a waste producer. Furthermore, there is a danger of reputational damage should a customer or collector illegally dispose of hazardous waste lubricant oil (e.g., by illegally burning this waste as a source of heat).
- 4.198 The test of whether or not the merged entity has an incentive to partially foreclose depends on whether or not it is profitable to do so. The Commission must consider whether, following completion of the Proposed Transaction, the merged entity will likely raise prices (and/or lower the quality of the treatment service it provides to rival collectors) in the treatment market in which it has market power. As a result, rivals to the merged entity in the potential collection market for hazardous waste lubricant oil in the State would experience increased costs. Given the fact that treatment is a critical component, rival collectors would have little alternative but to raise prices to customers (i.e., waste producers).
- 4.199 The Commission considers that the demand for hazardous waste lubricant oil treatment services is likely to be relatively unresponsive (i.e., inelastic) to price changes. As noted above, there is no alternative to treatment in an EPA-licensed facility except illegal burning in the winter months by the waste producer which could result in adverse legal consequences and reputational damage. Hence, there is likely to be only a small decline in demand for treatment services in response to a price rise.

⁶⁵ [...]

⁶⁶ See paragraph 5.11 of the Commission’s “*Guidelines for Merger Analysis*”.



- 4.200 The incentive to partially foreclose will vary by how much the downstream operation of the merged entity can be expected to benefit in terms of the degree of switching by customers in the potential market for the supply of hazardous waste lubricant oil collection services in the State. Information provided by the notifying parties to the Commission indicates that there are no barriers to switching for customers and collection services for hazardous waste lubricant oil appear relatively substitutable across different collectors. Thus, the merged entity could potentially acquire market share in the potential market for the supply of hazardous waste lubricant oil collection services in the State as a result of a partial input foreclosure strategy.
- 4.201 There are two main factors that determine whether the merged entity has an incentive to partially input foreclose. First, the loss in profits from the decline in demand for treatment services for hazardous waste lubricant oil supplied to competing collectors compared to the increased profits resulting from increased collection volumes at the expense of downstream rival collectors. Information provided to the Commission by the notifying parties, while not definitive, suggests that the annual gross margins generated by both Enva and the Rilta Group in the potential market for the supply of hazardous waste lubricant oil treatment services in the State were [...] the annual gross margins generated by both Enva and the Rilta Group in the collection market in the State over the period 2013-2017. Hence, it is not at all clear that this first mechanism provides an incentive for the merged entity to engage in a partial input foreclose strategy following completion of the Proposed Transaction.
- 4.202 The second main factor that determines whether the merged entity will have an incentive to partially input foreclose is that if rivals' costs are raised this will put pressure on collectors of hazardous waste lubricant oil to raise prices. This will, in turn, allow the merged entity to raise prices in the potential market for the supply of hazardous waste lubricant oil collection services in the State. Given that the merged entity accounted for [95-100]% of this potential market in 2017, it would appear to have a clear incentive to raise prices.⁶⁷ The Commission considers that it is likely that the gain on the second mechanism will outweigh any loss through the first mechanism.
- 4.203 The Commission is therefore of the view that, on balance, the merged entity will have an incentive to raise prices in the potential market for the supply of hazardous waste lubricant oil collection services in the State.

Conclusion on Vertical Effects

- 4.204 The Commission is concerned that the Proposed Transaction will provide the merged entity with the ability and incentive to partially input foreclose its rivals in the potential market for the supply of hazardous waste lubricant oil collection services in the State.

Proposals Submitted by Enva

- 4.205 On 19 December 2018, Enva submitted to the Commission formal proposals under section 20(3) of the 2002 Act to accept hazardous waste lubricant oil from any third

⁶⁷ Paragraph 43 of the European Commission's guidelines on non-horizontal mergers states that "*The greater the market shares of the merged entity downstream, the greater the base of sales on which to enjoy increased margins.*" The European Commission's guidelines on non-horizontal mergers can be accessed at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:265:0006:0025:en:PDF>



party, including the purchaser of the JFK Site, “at a maximum price of zero euro (€) cents per litre, subject to fluctuations in that price reflecting fluctuations in the prices available on relevant oil product markets (such that, at any given time Enva may pay or be paid to accept Waste Lubricant Oil)” (the “Waste Oil Access Undertaking”).

- 4.206 The Commission is of the view that the proposals are sufficient to address the competition concerns identified by the Commission in the potential market for the supply of hazardous waste lubricant oil treatment services in the State. In accordance with section 20(3) and section 26(1) and section 26(4) of the 2002 Act, the proposals have become commitments binding upon Enva.
- 4.207 The Commission considers that the Waste Oil Access Undertaking will retain the pre-Proposed Transaction competitive landscape such that the Proposed Transaction will no longer have any competitive impact on the potential market for the supply of hazardous waste lubricant oil treatment services in the State.



5. CONCLUSION

- 5.1 In light of its analysis as set out in this determination, and having taken the proposals into account, the Commission has determined that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.
- 5.2 Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.



6. ANCILLARY RESTRAINTS

- 6.1 The SPA contains a number of restrictive obligations on the Sellers. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.⁶⁸ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

⁶⁸ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN).



7. DETERMINATION

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), Enva Irish Opco Limited (“Enva”) has submitted to the Competition and Consumer Protection Commission (the “Commission”) the proposals set out below regarding measures to be taken to ameliorate any effects of the proposed acquisition on competition in markets for goods or services in the State, with a view to the said proposals becoming binding on Enva.

The Commission has taken the proposals into account and, in light of the said proposals (which form part of the basis of its determination), has determined in accordance with section 22(3)(a) of the Act that the result of the proposed acquisition, whereby Exponent Private Equity LLP, through Enva, would acquire sole control of: (i) Richardstown Investments Limited, (ii) Grangerath Investments Limited, (iii) Noah Investments Limited and their subsidiaries including Rilta Environmental Limited and its subsidiaries: (i) ClearCircle Environmental (NI) Limited; (ii) Soils Environmental Services Unlimited Company (iii) Returnbatt Unlimited Company; and (iv) Cullen Environmental Services Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission



Proposals by Enva to the CCPC

PART I – PROPOSALS RELATING TO THE JFK SITE (“Divestment Proposals”)

A. Definitions

1. For the purpose of the Divestment Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**CCPC**” means the Competition and Consumer Protection Commission and its successors;

“**Determination**” means the Determination of the CCPC pursuant to Section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

“**Divestment Package**” means (i) all of Enva’s interest, rights and obligations in respect of the JFK Site; and (ii) all property, plant and equipment at the JFK Site identified in the **Appendix to the Divestment Proposals**), which is to be sold by Enva under the terms of these Divestment Proposals;

“**Enva**” means Enva Irish Opco Limited (formerly known as GWE Irish Opco Limited), which is ultimately owned and controlled by Exponent Private Equity LLP;

“**JFK Site**” means the real property which at the date of the Determination is owned and operated by Enva at JFK Industrial Estate, John F Kennedy Road, Naas Road, Dublin 12, D12 CF34;

“**Proposed Transaction**” means the proposed acquisition by Enva of sole control of Rilta Group as notified to the CCPC on 4 May 2018; and

“**Rilta Group**” means (i) Richardstown Investments Limited; (ii) Grangerath Investments Limited; (iii) Noah Investments Limited; and their subsidiaries including Rilta Environmental Limited and its subsidiaries: (i) ClearCircle Environmental (NI) Limited ; (ii) Soils Environmental Services Unlimited Company; (iii) Returnbatt Unlimited Company; and (iv) Cullen Environmental Services Limited.

B. The Proposal to Divest

2. Enva undertakes, subject to the provisions set out herein, to effect the sale of the Divestment Package within [...] of the Determination to an independent third party purchaser or purchasers approved by the CCPC (whose approval shall not be unreasonably withheld).
3. Enva recognises that the sale of the Divestment Package shall be upon such conditions as the CCPC may consider proper and that the acquisition of the Divestment Package by a prospective purchaser must not be likely to create, in light of information available to the CCPC, *prima facie* competition concerns.



4. Enva recognises that for a prospective purchaser to meet with the CCPC's approval, such purchaser shall be unconnected to and independent of Enva and Rilta Group and shall be able to maintain and develop the Divestment Package as an active competitive force.
5. Enva further recognises that for a prospective purchaser to meet with the CCPC's approval, that purchaser must be deemed reasonably likely to obtain all authorisations and consents required to effect a transfer of the Divestment Package.
6. Enva shall be deemed to have complied with paragraph 2 above if, within a [...] period from the Determination (or such longer period as may be allowed by the CCPC or as may result from the delays referred to in paragraph 9 below), it has entered into a binding letter of intent or a binding contract for the divestment of all elements of the Divestment Package (subject to due diligence, regulatory consents and any other conditions not within the control of Enva or the purchaser) provided that such divestment is completed within a [...] period from the date of the relevant letter of intent or contract (or such longer period as may be allowed by the CCPC).
7. Enva shall:
 - (i) promptly inform the CCPC in writing, with a fully documented and reasoned proposal, of any prospective purchaser who indicates a serious desire to purchase the Divestment Package and to whom Enva is seriously considering the divestment of the Divestment Package, enabling the CCPC to verify the suitability of the prospective purchaser; and
 - (ii) when the parties have entered into a binding letter of intent or a binding contract for the divestment of the Divestment Package, submit a fully documented and reasoned proposal enabling the CCPC to verify that the conditions laid down in these Divestment Proposals are fulfilled and that there has been no material change in the status of the purchaser not reasonably foreseeable at the time the CCPC assessed that purchaser's suitability under paragraph 7(i) subject to the CCPC agreeing to keep confidential all such information received.
8. The CCPC shall communicate in writing its approval or non-approval of a prospective purchaser within [...] of receipt of a fully documented and reasoned proposal identifying a prospective purchaser in accordance with paragraph 7(i). Separately, within [...] of receipt of a binding agreement and accompanying fully documented and reasoned proposal in accordance with paragraph 7(ii), the CCPC shall communicate in writing its view as to whether the conditions laid down in these Divestment Proposals have been fulfilled and as to whether there has been any material change in the status of the purchaser as provided for in paragraph 7(ii).
9. Failure of the CCPC to communicate its approval or non-approval of a prospective purchaser within two weeks of receipt of a fully documented and reasoned proposal identifying such a purchaser in accordance with paragraph 7(i) shall delay the running of the [...] period established above until the CCPC communicates its approval or non-approval. However, if the CCPC does not communicate its approval or non-approval within thirty days of receipt as aforesaid, such approval shall be deemed to have been



given unconditionally. In the case of a plurality of offers from prospective purchasers to whom the CCPC does not object, Enva shall be free to accept any offer or to select the offer it considers best.

C. The Divestment Package

The Divestment

10. Enva undertakes not to purchase the Divestment Package (or otherwise to acquire any interest in the JFK Site) for a period of [...] following the divestment of the said Divestment Package pursuant to these Divestment Proposals. Enva further undertakes not to seek or accept a lease, licence or agreement to use the JFK Site during the said [...] period. For the avoidance of doubt, this does not preclude Enva from trading with the purchaser of the JFK Site to deliver waste and other products to, or accept same from, the purchaser in the ordinary course of business.
11. Enva undertakes that if it attempts, following the expiry of the said [...], to buy the Divestment Package (or otherwise to acquire any interest in the JFK Site), it will inform the CCPC prior to doing so and will notify any such proposed acquisition in accordance with Section 18(3) of the Act (or its successor provision, if applicable) if required to do so by the CCPC.
12. Enva confirms that it will not impose, as a condition of sale of the Divestment Package, an obligation on the purchaser to acquire any associated assets or staff from Enva that do not currently form part of the Divestment Package.
13. [...]

Interim Position of the Divestment Package

14. Following the Determination and pending the sale of the Divestment Package, Enva undertakes to continue to operate the Divestment Package and to preserve the economic viability, marketability, and competitiveness of the Divestment Package until the date of divestment in accordance with good commercial practice. Enva further undertakes to appoint the [...] (the “**JFK Manager**”) as the person with responsibility for the continued day-to-day management of all operations relating to the Divestment Package, under the supervision of the Trustee (as defined in paragraph 4 of Part III of these Proposals). The JFK Manager shall continue to manage all operations relating to the Divestment Package in the best interest of the Divestment Package with a view to ensuring its continued economic viability, marketability, and competitiveness.
15. Enva undertakes to protect the value of the Divestment Package during the period from the date of the Determination until the date of divestment of the Divestment Package and, more specifically:
 - (i) to ensure that it continues to operate insofar as possible the same business there as was in operation on the date of the Determination, specifically by



- (A) collecting and/or accepting oily water tank and interceptor waste, and waste lubricant oil, and
 - (B) treating, discharging to sewer, selling (including by exporting) or otherwise disposing of these waste forms, each as appropriate, in the manner most commercially advantageous to the Divestment Package;
- (ii) to commit to the provision of operational and capital expenditure if and where such expenditure is necessary to ensure maintenance of good working order of the Divestment Package (e.g. to repair or replace damaged or worn equipment, including storage tanks and vehicles); and
 - (iii) to continue to abide by all requirements in the waste licence associated with the JFK Site, Waste Licence WO196-01.

For the avoidance of doubt, the foregoing obligations in paragraphs 14 and 15 shall cease immediately on divestiture of the Divestment Package or (where relevant and appropriate) at such later time as may be agreed between Enva and the purchaser of the Divestment Package.

- 16. Enva undertakes not to carry out any act upon its own authority which may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the Divestment Package until the date of its divestment. Further, Enva undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature or the scope of activity, or the industrial or commercial strategy, or the investment policy of the Divestment Package.
- 17. [...]

Review clause

- 18. The CCPC may at its sole discretion extend any of the time periods provided for in these Divestment Proposals in response to a reasoned request from Enva or the Trustee or, in appropriate cases, on its own initiative. The CCPC may further, at its sole discretion, in response to a reasoned request from Enva or the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in these Divestment Proposals.



APPENDIX TO THE DIVESTMENT PROPOSALS

The Divestment Package includes the following property, plant and equipment at the JFK Site:

1. Tank Farm comprising of six large bulk tanks used for the storage and processing of liquid waste:
 - a. Tank 1 c.50,000 litres;
 - b. Tank 2 c.50,000 litres;
 - c. Tank 3 c.50,000 litres;
 - d. Tank 4 c.65,000 litres;
 - e. Tank 5 c.110,000 litres;
 - f. Tank 6 c.110,000 litres;
2. Two Stainless steel tanks used for storage of grease trap waste c.8,000 litres each;
3. Aboveground oil water interceptor (in tank farm);
4. Filterpress including associated air compressor & receiver, pumps, pipework and enclosure;
5. Polymer dosing system;
6. Two rotating screens for waste acceptance;
7. Two bunded storage racks, fully enclosed;
8. In ground bunded tanker dig out bay;
9. Weighbridge including associated readout, printer and weighbridge software;
10. One Yard based vacuum tanker (for site use not for road use);
11. Lab equipment including Hach meter and heating block, Spectrophotometer, pH meter and associated pipettes & glassware;
12. Industrial Washing machine;
13. Industrial (Clothes) Dryer;
14. Teleporter and associated attachments (bucket & forks);
15. Forklift;
16. Netwatch monitored CCTV intruder alarm system;
17. Fire detection system and alarm; and
18. Building incorporating two storey office accommodation and storage area (asbestos cement roof).



PART II – PROPOSALS RELATING TO WASTE LUBRICANT OIL AND HAZARDOUS CONTAMINATED SOIL (“Access Proposals”)

A. Definitions

1. For the purpose of the Access Proposals, the terms defined in Part I of this Proposal document have the same meaning in this Part II, and the following terms shall have the following meaning:

“**Complete Treatment of Waste Lubricant Oil**” means the processing of Waste Lubricant Oil into a final product (e.g., reprocessed fuel oil);

“**Hazardous Contaminated Soil**” means hazardous contaminated soil identified by waste codes 17 05 03, 17 05 05 and 17 05 07 in Commission Decision of 18 December 2014, amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/EC of the European Parliament and of the Council (2014/955/EEC);

“**Hazardous Soil Project**” means a single construction or similar project involving the removal of Hazardous Contaminated Soil, and in some circumstances, non-hazardous soil, from the same location, whether in one or more truck loads and over one or more days, for delivery to Enva;

“**Public Holidays**” has the meaning provided for in the Interpretation Act 2005;

“**Waste Lubricant Oil**” means waste engine, gear and lubricating oils identified by waste codes 13 02 04 to 13 02 08 in Commission Decision of 18 December 2014, amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/EC of the European Parliament and of the Council (2014/955/EEC).

B. The Access Proposals

2. Enva undertakes, subject to the provisions set out herein, to:
 - a. accept Waste Lubricant Oil from: i) the purchaser of the Divestment Package; and ii) any third party, subject to the provisions herein (**Waste Oil Access Undertaking**); and
 - b. accept Hazardous Contaminated Soil from any third party (including, for the avoidance of doubt, the purchaser of the Divestment Package), subject to the provisions herein (**Hazardous Soil Access Undertaking**).

C. The Terms of Access

The Waste Oil Access Undertaking

3. The Waste Oil Access Undertaking is subject to the following terms and conditions:
 - a. Waste Lubricant Oil will be accepted by Enva at a maximum price of zero euro (€) cents per litre, subject to fluctuations in that price reflecting fluctuations in the prices available on relevant oil product markets (such that, at any given time



- Enva may pay or be paid to accept Waste Lubricant Oil) strictly in accordance with clear, transparent and reasonable criteria to be agreed with the Trustee;
- b. Waste Lubricant Oil will be accepted by Enva on a minimum of three working days' notice only, at a time agreed between the buyer of the Divestment Package and Enva, and only between the hours of 8.00am and 6.00pm on weekdays, excluding Public Holidays;
 - c. Waste Lubricant Oil will be accepted by Enva on condition that it meets pre-determined, transparent and clear chemical specifications for Waste Lubricant Oil as set out in section A of the Appendix to the Access Proposals;
 - d. The Waste Oil Access Undertaking will be limited to acceptance by Enva of Waste Lubricant Oil collected from waste producers in the Republic of Ireland; and
 - e. Subject to paragraph 4., the Waste Oil Access Undertaking will be effective from the date of the Determination for [...].
4. Notwithstanding paragraph 3(e) above, the CCPC may extend, at its sole discretion, the Waste Oil Access Undertaking for [...] in circumstances where neither the purchaser of the Divestment Package nor another entity has commenced the Complete Treatment of Waste Lubricant Oil at a minimum capacity of [...] in the Republic of Ireland within [...] of the date of the Determination.
 5. Enva undertakes at all times to act in good faith when arranging and receiving of deliveries of Waste Lubricant Oil from the purchaser of the Divestment Package.
 6. Enva undertakes, where appropriate, to pay for each delivery within 60 days of receipt of an invoice or receipt of delivery, whichever occurs later.

The Hazardous Soil Access Undertaking

7. The Hazardous Soil Access Undertaking is subject to the following terms and conditions:
 - a. Hazardous Contaminated Soil will be accepted by Enva at a price calculated in accordance with section B of the Appendix to the Access Proposals, subject to a requirement that Enva's charges shall at all times reflect fair market value;
 - b. Hazardous Contaminated Soil will be accepted by Enva on a minimum of three working days' notice only, at a time agreed between the relevant third party supplier and Enva, and only between the hours of 8.00am and 6.00pm on weekdays, excluding Public Holidays;
 - c. Hazardous Contaminated Soil will be accepted under the Hazardous Soil Access Undertaking on condition that no individual Hazardous Soil Project is over 2,000 tonnes of Hazardous Contaminated Soil and no individual third party deliver more than 6,000 tonnes of Hazardous Contaminated Soil in any one year. A maximum volume of 18,000 tonnes of Hazardous Contaminated Soil per year will be accepted under the Hazardous Soil Access Undertaking. Enva



- reserves the right to accept larger individual deliveries and total volumes of Hazardous Contaminated Soil at its own discretion separately from the Hazardous Soil Access Undertaking;
- d. Hazardous Contaminated Soil will be accepted on condition that it meets pre-determined, transparent and clear chemical specifications for Hazardous Contaminated Soil as set out in section B to the Appendix to the Access Proposals;
 - e. Enva will not be required to accept Hazardous Contaminated Soil unless the supplier of Hazardous Contaminated Soil has the appropriate national waste collection permit relating to the collection and transport of the Hazardous Contaminated Soil;
 - f. Enva will not be required to accept Hazardous Contaminated Soil that Enva is not permitted to store or treat, or that the storage or treatment of such Hazardous Contaminated Soil poses a significant compliance or operational risk, under Enva's relevant licenses;
 - g. The Hazardous Soil Access Undertaking will be effective from the date of the Determination for [...].
8. The CCPC may, at its sole discretion, in response to a reasoned request from Enva or the Trustee (as defined in paragraph 4 of Part III of these Proposals) showing good cause waive, modify or substitute any provision, including paragraph 3(a), of these Access Proposals, provided always that any such waiver, modification or substitution is necessary, proportionate and objectively justifiable.



APPENDIX TO THE ACCESS PROPOSALS

A *Conditions for the acceptance of Waste Lubricant Oil:*

- (i) For acceptance under the Waste Oil Access Undertaking, Waste Lubricant Oil must meet the following technical criteria:

Parameter	Specification
European Waste Catalogue (EWC) Code	13 02 04 to 13 02 08*
Kinematic Viscosity @ 40°C @ 40°C @ 100°C	140 to 220 Redwood 35-55 cSt 6.5-8.3 cSt
Flash point	60°C min
Sulphur Content	0.6 % max
Water Content	5% max
Ash Content	1.3 % max
Total Halogens, as chlorine	<500 ppm
PCBs	<2 ppm
Metals	
Zinc	<1000 ppm
Copper	<60 ppm
Lead	<150 ppm
Nickel	<20 ppm
Chromium	<20 ppm
Vanadium	<20 ppm
Cadmium	<10 ppm
Arsenic	<5 ppm
Mercury	<5 ppm

- (ii) In circumstances where the purchaser of the Divestment Package or a third party has not provided satisfactory laboratory analysis, a charge of €200 per bulk delivery may apply to cover laboratory analysis of delivered Waste Lubricant Oil and to ensure it meets Enva acceptance criteria (as Waste Lubricant Oil is the raw material used to produce a highly specified product).

B *Conditions for the acceptance of Hazardous Contaminated Soil:*

- (i) Waste must be categorised as EWC 17 05 03, 17 05 05 or 17 05 07* (Soil and Stones containing dangerous substances)
- (ii) The following parameters not being exceeded:

Parameter	Maximum Level
PAH(10)	2,000 mg/kg dry



Benzo(a)pyrene	34 mg/kg dry
Mineral Oil (GC)	15,000 mg/kg dry
EOX	50 mg/kg dry
PCB	0.5 mg/kg dry
Arsenic (AS)	500 mg/kg dry
Cadmium (Cd)	10 mg/kg dry
Chromium (Cr3+)	1000 mg/kg dry
Copper (Cu)	500 mg/kg dry
Mercury (Hg)	10 mg/kg dry
Lead (Pb)	3000 mg/kg dry
Nickel (Ni)	200mg/kg dry
Zinc (Zn)	3000 mg/kg dry
Detectable Asbestos Fibres	0.001%

(iii) Please note the following:

- a. Soils likely to cause nuisance odours cannot be accepted;
- b. Material must be stackable and readily handled with standard machinery;
- c. Particle size distribution: 63 µm fraction must be less than 40%;
- d. TML limit must be less than 20%;
- e. All material must have analysis provided and reviewed by Enva to ensure compliance with the criteria in (ii) above prior to acceptance;
- f. Subject to space availability at the facility.

(iv) Pricing:

- a. The following pricing banks (per Hazardous Soil Project) will apply:

Tonnage of Hazardous Contaminated Soil	Price per tonne
Less than 50	€110
50 - 150	€100
150 - 500	€95
500 +	€85



PART III – APPOINTMENT OF TRUSTEE IN RESPECT OF DIVESTMENT PROPOSALS AND ACCESS PROPOSALS

Appointment of a Trustee

1. Within [...] after the Determination or by [...], whichever is the later, Enva will propose to the CCPC a trustee, who is independent of Enva and Rilta Group (the **“Proposed Trustee”**). The appointment of the Proposed Trustee is subject to the approval of the CCPC (such approval not to be unreasonably withheld). If the CCPC does not reject the Proposed Trustee by notice in writing within five working days of the proposal, the Proposed Trustee shall be deemed to have been approved.
2. If the Proposed Trustee is rejected, Enva will propose the name of a new trustee (the **“New Trustee”**) within [...] of being informed of the rejection. If the CCPC does not reject the New Trustee by notice in writing to Enva within five working days of the new proposal, the New Trustee shall be deemed to have been approved.
3. If the New Trustee is rejected by the CCPC, the CCPC shall nominate a suitable trustee (the **“CCPC Trustee”**) which Enva will appoint or cause to be appointed.

Trustee’s Mandate

4. Within [...] of the date on which the CCPC has approved or is deemed to have approved either the Proposed Trustee, the New Trustee or the CCPC Trustee, Enva shall enter into a mandate agreement (**“Mandate”**) with the approved trustee (the **“Trustee”**), the terms of which shall have previously been agreed with the CCPC, which confers on the Trustee all the rights and powers necessary to permit the Trustee to monitor Enva’s compliance with the terms of the Divestment Proposals and the Access Proposals and in a manner consistent with the purpose of the Divestment Proposals and the Access Proposals.
5. The Trustee shall be independent of Enva and Rilta Group, possess the necessary qualifications and experience to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
6. Throughout the duration of the Trustee’s appointment, the Trustee shall, in respect of the Divestment Proposals:
 - (i) provide written reports (**“Trustee Reports”**) to the CCPC on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the CCPC may specify and are notified in writing to Enva. Enva shall receive a non-confidential copy of such Trustee Reports;
 - (ii) monitor and advise the CCPC as to the development of the procedure for selecting a purchaser and as to the conduct of the negotiations;



- (iii) monitor and advise the CCPC as to whether the prospective purchaser(s) with whom Enva intends to negotiate are likely to satisfy the CCPC's requirements as to suitability;
 - (iv) monitor the maintenance of the viability and marketability of the Divestment Package and ensure that it is managed in the ordinary course of business, pursuant to good business practice.
- 7. Throughout the duration of the Trustee's appointment, the Trustee shall, in respect of the Access Proposals:
 - (i) provide quarterly reports to the CCPC regarding Enva's compliance with its obligations under the Access Proposals, including details of any complaints received from third parties seeking to avail of the Hazardous Soil Access Undertaking or the purchaser of the Divestment Package or third parties in relation to the Waste Oil Access Undertaking, or any proposed amendments to the terms and conditions of the Hazardous Soil Access Undertaking or the Waste Oil Access Undertaking;
 - (ii) provide, before the expiry of [...] from the date of the Determination, a report to the CCPC relating to the market in the Republic of Ireland for the treatment of Waste Lubricant Oil.
 - (iii) provide such other ad hoc updates to the CCPC as the Trustee considers necessary;
 - (iv) monitor Enva's compliance with the Access Proposals.
- 8. The Trustee's duties and functions as set out above shall not be extended or varied in any way by Enva, save with the express consent of the CCPC. Any instruction or request to the Trustee from Enva which conflicts with the terms of the Mandate, and the duties and functions as set out above, will be considered null and void.
- 9. The CCPC may, on its own initiative or at the request of the Trustee, give any orders or instructions to the Trustee that are required in order to ensure compliance with the conditions and obligations attached to the Determination so long as Enva is first given a reasonable opportunity to comment on any such orders or instructions in advance.
- 10. After [...] (or such longer period as may be agreed by the CCPC or as may result from the delays referred to in section B of Part I above (the Divestment Proposals)) have lapsed from the Determination without Enva having entered into a binding agreement for the divestment of all elements of the Divestment Package, the Trustee shall be given an irrevocable mandate to negotiate and conclude arrangements for the divestment of the Divestment Package in relation to which a binding agreement remains to be concluded [...] and upon such terms and conditions as it considers appropriate for an expedient divestment, to a viable and independent third party (subject to the CCPC having approved both the purchaser and the binding letter of intent or binding contract for the divestment of the Divestment Package in accordance with paragraphs 7 and 8 of Part I above (the Divestment Proposals)). The Trustee shall, however, have regard to the legitimate financial interests of Enva in respect of such divestment, [...].



11. In the event of a dispute (including a dispute in relation to a price determined by the terms and conditions of clause 3(a) of the Access Proposals) between Enva and any party entitled to the benefit of the Access Proposals, the Trustee shall hear from Enva and the other party in relation to the dispute and, having considered all information provided, the Trustee's decision to resolve the dispute shall be final.
12. The Trustee's mandate shall expire on the third anniversary of the date of the Determination, unless the Waste Oil Access Undertaking has been extended pursuant to paragraph 4 of the Access Proposals in which case the Trustee's mandate shall expire on the fifth anniversary of the date of the Determination.

Miscellaneous

13. Enva will provide the Trustee with all reasonable assistance and will procure (so far as it is able) that all relevant third parties provide such assistance required to ensure compliance with these Divestment Proposals and Access Proposals. Enva will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by Enva as the Trustee may require in carrying out its Mandate, and will pay reasonable remuneration for the Trustee's services.
14. In addition, at the expense of Enva, the Trustee may (during the trustee divestiture period referred to in paragraph 10 above) appoint advisors (in particular for corporate finance or legal advice), subject to Enva's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Enva refuse to approve the advisors proposed by the Trustee, the CCPC may approve the appointment of such advisors instead, after first having heard Enva. Only the Trustee shall be entitled to issue instructions to the advisors.
15. The Trustee shall have full and complete access to the JFK Manager, and any other employees of Enva working at the location of the Divestment Package, in order to ensure compliance by Enva with its obligation to maintain the financial and competitive viability of the Divestment Package.
16. The Trustee shall have full and complete access to the Enva employees working in the divisions accepting deliveries of Waste Lubricant Oil and Hazardous Contaminated Soil in accordance with the Access Proposals, in order to ensure full compliance with Enva's obligations under the Access Proposals.
17. Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have to the extent possible, given the nature of its tasks, due regard to the commercial interests of Enva.
18. Enva shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Enva for, any liabilities arising out of the performance of the Trustee's duties under the Divestment Proposals, the Access Proposals and the Mandate, except to the extent that such liabilities result from the



wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

19. The Mandate, the Divestment Proposals, and the Access Proposals shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if Enva announces that the Proposed Transaction has been irrevocably abandoned.
20. The Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable

Review clause

21. The CCPC may at its sole discretion extend any of the time periods provided for in relation to the appointment of the Trustee in response to a reasoned request from Enva or the Trustee or, in appropriate cases, on its own initiative. The CCPC may further, at its sole discretion, in response to a reasoned request from Enva or the Trustee showing good cause waive, modify or substitute, in exceptional circumstances, any provision in relation to the appointment of the Trustee.