



# DETERMINATION OF MERGER NOTIFICATION M/18/039 – BROOKFIELD/IMAGINE

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## Section 21 of the Competition Act 2002

### Proposed acquisition by BCP IV Telecommunications Limited of sole control of Imagine Communications Group Limited

Dated 7 June 2018

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#### Introduction

1. On 10 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 Brookfield Capital Partners IV GP Limited (“BCP”), through its wholly-owned subsidiary BCP IV Telecommunications Limited (“BCPTL”)<sup>1</sup>, would acquire sole control of Imagine Communications Group Limited (“Imagine”) (the “Proposed Transaction”). BCP’s ultimate parent is Brookfield Asset Management Inc. (“Brookfield”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a Share Subscription Agreement (“the SSA”) dated 4 May 2018 between BCPTL, Imagine, Imagine’s Existing Shareholders<sup>2</sup>, and [...]. Pursuant to the SSA, BCPTL would acquire [...] % of the voting shares of Imagine. Following the completion of our Proposed Transaction, Imagine’s current shareholders will hold, in aggregate, a minority shareholding of [...] % of the voting shares.
3. The parties also submitted a draft Shareholders’ Agreement (“SHA”) between the Existing Shareholders, Imagine and BCPTL. The SHA records the manner in which

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<sup>1</sup> BCPTL is an entity incorporated for the purposes of the Proposed Transaction.

<sup>2</sup> These are [...].



Imagine's shareholders will regulate their relationship with each other and the operation of Imagine following the completion of the Proposed Transaction.

4. The parties submitted that as a result of its majority voting interest and the rights conferred on it in the Shareholders' Agreement, BCPTL will have sole control of Imagine following the completion of the Proposed Transaction.

### The Undertakings Involved

#### *The Acquirer - BCPTL*

5. BCPTL, a limited company incorporated in Jersey, is ultimately owned and controlled by Brookfield, a global alternative asset manager.
6. Brookfield manages assets on behalf of its clients and invests alongside its clients. Brookfield focuses on investing in assets across real estate, infrastructure, renewable power and private equity. Brookfield's capital is invested in its four listed partnerships: (i) Brookfield Property Partners; (ii) Brookfield Infrastructure Partners; (iii) Brookfield Renewable Partners; and (iv) Brookfield Business Partners.
7. Brookfield is mainly involved in the renewable energy sector in the State through a portfolio of 41 energy companies. Brookfield is also involved in infrastructure management and other activities in the State. Table 1 below provides a list of all the portfolio companies owned and controlled by Brookfield (the "Brookfield Portfolio Companies") that are registered in the State.

**Table 1: Brookfield Portfolio Companies**

<b>Portfolio Company</b>	<b>Business Activity</b>
[...]	Oil and gas distribution
[...]	Renewable Energy





Portfolio Company	Business Activity
[...]	Renewable Energy
[...]	Brookfield Infrastructure Management (BIM) Business Group
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[...]	Brookfield Infrastructure Management (BIM) Business Group
[...]	Brookfield Infrastructure Management (BIM) Business Group
[...]	Brookfield Infrastructure Management (BIM) Business Group
[...]	Developer, owner and operator of holiday parks and the sale and provision of associated goods and services
[...]	Oil and gas company
[...]	Financial services entity engaged in loan making to entities within Brookfield Group. It is not in the business of making loans to third parties.

Source: Information provided by the parties.

8. The parties informed the Commission that none of the Brookfield Portfolio Companies currently provides retail and/or wholesale electronic communications services or access to telecommunications infrastructure (e.g., towers) in the State.
9. For the financial year ending 31 December 2016, Brookfield's worldwide turnover was approximately €20.9 billion, of which approximately €[...] was generated in the State.<sup>3</sup>

#### *The Target – Imagine*

<sup>3</sup> One of Brookfield's portfolio companies, Greenergy International Limited, completed the acquisition of Inver Energy Limited in November 2017. For detail of this acquisition, please see Case M.8601 Greenergy/ Inver at [http://ec.europa.eu/competition/mergers/cases/decisions/m8601\\_116\\_3.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m8601_116_3.pdf). For the financial year ending 31 December 2016, Inver Energy Limited's turnover in the State was €[...].



10. Imagine, a private limited company registered in the State, is a provider of broadband and fixed-line voice telephony services to residential subscribers<sup>4</sup>. At the wholesale level, Imagine provides call origination and call termination services to other providers of electronic communications services, as well as wireless network connectivity services to business customers of Magnet Networks Limited (“Magnet”)<sup>5</sup>. In addition, Imagine holds a number of radio frequency spectrum licences from the Commission for Communications Regulation (“ComReg”)<sup>6</sup>.
11. For the financial year ending 31 December 2016, Imagine’s worldwide turnover was approximately €15.6 million, of which approximately €11.2 million was generated in the State.

#### **Rationale for the Proposed Acquisition**

12. The notification states:

*“Brookfield’s objective is to generate attractive long-term risk-adjusted returns for the benefit of its clients and shareholders, and the Proposed Transaction compliments (sic) this aim. From the perspective of Imagine’s current shareholders, the Proposed Transaction represents an opportunity to secure investment in the business from an experienced and well-resourced professional investor, [...]”*

#### **Third Party Submissions**

13. No submission was received.

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<sup>4</sup> In March 2016, Imagine sold its retail business division to Magnet Networks Limited. See <https://www.magnet.ie/business/news/magnet-networks-acquires-imagines-retail-business-division/>. The notification of this transaction was not mandatory.

<sup>5</sup> As part of Imagine’s sale of its retail business division to Magnet in 2016, Imagine agreed to continue to provide wireless network connectivity services to its former business customers. The parties informed the Commission that currently Imagine supplies 839 Magnet customers.

<sup>6</sup> The parties informed the Commission that Imagine currently holds a 3.6GHz band licence, a 10.5 GHz fixed wireless access local area licence for both the Cork and Dublin areas, an 18 GHz point to point radio link licence, a 26GHz fixed wireless local access licence and a 26 GHz national “point-to-point” licence.



14. The Commission contacted ComReg to obtain its views on the Proposed Transaction. ComReg informed the Commission that it had no observations on the Proposed Transaction.

### **Competitive Analysis**

#### *Horizontal Overlap*

15. There is no horizontal overlap in the State between the activities of the parties. As described above, Imagine is active in the provision of retail and wholesale electronic communications services in the State. None of the Brookfield Portfolio Companies currently generating turnover in the State are engaged in the same business activities as Imagine.
16. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

#### *Vertical Relationship*

17. The parties informed the Commission that there is no vertical relationship in the State between Imagine and any of the Brookfield Portfolio Companies currently generating turnover in the State. The Commission has not identified any existing vertical relationship between the parties.
18. However, following completion of the Proposed Transaction, Imagine could potentially start to provide retail electronic communications services to the Brookfield Portfolio Companies. The Commission considers that this potential vertical relationship will not give rise to any vertical foreclosure concerns in the State for the following reasons:
  - There are a number of well-established telecommunications companies competing with Imagine in the supply of retail electronic communications services in the State, such as eir, Virgin Media and Vodafone<sup>7</sup>. There would not be input foreclosure as competitors of the Brookfield Portfolio Companies

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<sup>7</sup> In this regard, the parties informed the Commission that Imagine's market share in terms of fixed internet access subscriptions was below 2% as of Q3 2017. Similarly, Imagine's market share in terms of fixed-line telephony subscriptions was below 2% as of Q3 2017.



would continue to have a choice between a number of telecommunications companies. Furthermore, Imagine does not currently supply retail electronic communications services to any competitors of the Brookfield Portfolio Companies.

- With regard to customer foreclosure, following the completion of the Proposed Transaction, there will remain a large number of business customers purchasing retail electronic communications services. Imagine's competitors would not be foreclosed from supplying retail electronic communications services in the State.

19. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### **Conclusion**

20. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

### **Ancillary Restraints**

21. The parties have informed the Commission that the SHA contains non-compete and non-solicitation obligations on the [...] and [...]. The duration of those restrictive obligations does not exceed the maximum duration acceptable to the Commission. The Commission considers these non-compete and non-solicitation obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.



## **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby Brookfield Capital Partners IV GP Limited, through its wholly-owned subsidiary BCP IV Telecommunications Limited, would acquire sole control of Imagine Communications Group 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

**Patrick Kenny**

**Member**

**Competition and Consumer Protection Commission**