



DETERMINATION OF MERGER NOTIFICATION M/18/036 - ENVA/RILTA

Section 22 of the Competition Act 2002

Proposed acquisition by Exponent Private Equity LLP, through Enva Irish Opco Limited, of sole control of Richardstown Investments Limited, Grangerath Investments Limited, Noah Investments Limited and their subsidiaries.

Dated 20 December 2018

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 within [...] 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.