



DETERMINATION OF MERGER NOTIFICATION M/20/005 – ESB/COILLTE (JV)

Section 22 of the Competition Act 2002

Proposed establishment of a joint venture between the Electricity Supply Board and Coillte Cuideachta Ghníomhaíochta Ainmnithe

Dated 5 February 2020

Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (the “Act”), the Electricity Supply Board (“ESB”) and Coillte Cuideachta Ghníomhaíochta Ainmnithe (“Coillte”) have submitted to the Competition and Consumer Protection Commission (the “Commission”) the joint 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 joint proposals becoming binding on ESB and Coillte.

Additionally, pursuant to section 20(3) of the Act, Coillte has submitted to 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 Coillte.

The Commission has taken the joint proposals and proposals into account and, in light of the said joint proposals and 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 creation of a joint venture between ESB and Coillte, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the transaction may be put into effect.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

**Competition and
Consumer Protection
Commission**



MERGER NOTIFICATION M/20/005 – ESB/COILLTE (JV)

JOINT FORMAL PROPOSALS: 28 January 2021

Joint Formal Proposals submitted by The Electricity Supply Board and Coillte Cuideachta Ghníomhaíochta Ainmnithe to the Competition and Consumer Protection Commission (“Proposals”)

RECITALS

- (A) On 12 February 2020, the proposed creation of a joint venture by ESB and Coillte was notified to the Commission in accordance with section 18(1)(a) of the Act (the “Proposed Transaction”).
- (B) Prior to completion of the Proposed Transaction, Coillte intends to establish a wholly-owned subsidiary (**DevCo**) to which Coillte, upon completion of the Proposed Transaction, would transfer its onshore wind development business (including relevant business unit employees) and associated assets/goodwill. Following implementation of the Proposed Transaction, ESB would acquire a 50% shareholding in DevCo.
- (C) ESB and Coillte will subsequently incorporate a jointly-controlled holding company (“HoldCo”) and will transfer all of the shares in DevCo to HoldCo. HoldCo will, subject to approval by its board, establish special purpose vehicles to which individual renewable energy projects will be transferred (i.e. Development Projects, including wholly-owned Development Projects and Co-Development Projects).
- (D) Pursuant to Section 20(3) of the Act, ESB and Coillte have submitted the Proposals to the Commission relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on ESB and Coillte.
- (E) The Proposals submitted by ESB and Coillte are intended to confirm the arrangements as set out in the Agreement that would prevent any direct or indirect exchange of competitively sensitive information between ESB, Coillte, HoldCo, DevCo and the potential Co-Development Project Partners.

Definitions

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

Act means the Competition Act 2002, as amended;

Agreement means the shareholders’ agreement between Coillte; ESB Wind Development Limited; HoldCo; and DevCo (and any amendments thereto), submitted to the Commission in agreed form on 12 February 2020;

AssetCo means, where relevant in the event that an AssetCo framework is established, the entity which contracts, or intends to contract, with DevCo or HoldCo to acquire Coillte’s indirect equity interests in a Co-Development Project company, as more particularly set out in the Agreement;



Business Plan means the business plan of the Company Group from time to time, which shall be:

- (a) from the date of the Agreement, the [...] business plan of the Company Group; and
- (b) thereafter, any proposed amended business plan that is approved by the board of a member of the Company Group in accordance with the Agreement;

JV Chief Financial Officer or JV CFO means the chief financial officer of the Company Group;

Co-Development Agreement means any agreements entered into from time to time between any company in the Company Group and any third party for the joint development of renewable energy facilities;

Co-Development Project means any of the projects to be developed pursuant to any Co-Development Agreements that DevCo is party to, from time to time;

Co-Development Project Partner means any counterparty to a Co-Development Agreement (other than, where applicable, ESB);

Co-Development Project Partner CSI means any specific, disaggregated information in relation to a Co-Development Project Partner where the disclosure of such information would constitute a breach of section 4(1) of the Act. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of these Proposals, shall not be considered to constitute Co-Development Project Partner CSI.

For the purposes of these Proposals, information which relates to Co-Development Projects or proposed joint projects between the Company Group and a Co-Development Project Partner shall constitute Company Group Project CSI and not Co-Development Project Partner CSI;

Co-Development Project Partner Personnel means any officer, employee, representative or agent of, or person holding equivalent function in, a Co-Development Project Partner (including any member of that Co-Development Project Partner's corporate group);

Co-Development SPV means any special purpose vehicle relating to a Co-Development Project;

Coillte means Coillte Cuideachta Gníomhaíochta Ainmnithe;

Coillte Directors means the directors appointed by Coillte to a Company Group company, including as alternate directors, and each individually a **Coillte Director**;

Coillte Personnel means any officer, employee, representative or agent of, or person holding equivalent function in, Coillte other than the Coillte Directors;

Coillte Termination Date means the date on which (a) Coillte disposes of its entire shareholding in HoldCo to a third party not owned or controlled by Coillte; or (b) Coillte acquires the entire issued share capital of HoldCo subject to conclusion of any review required under Part 3 of the Act; or (c) the Parties receive written confirmation from the Commission that the Proposals shall cease to apply;



Commencement Date means the date of the Commission's determination pursuant to section 22(3)(a) of the Act that the Proposed Transaction may be put into effect;

Commission means the Competition and Consumer Protection Commission and its successors;

Company Group means HoldCo together with its subsidiaries from time to time and all undertakings directly or indirectly controlled by HoldCo (which, for the avoidance of doubt, includes DevCo). In this context, the notion of control shall be interpreted pursuant to section 16 of the Act;

Company Group Project means a project owned, developed, or to be developed, by a member of the Company Group for the generation of electricity from a renewable source or as may otherwise be agreed by the Parties;

Company Group Project CSI means any specific disaggregated information, including in relation to pricing in the context of any proposed RESS auction(s) or of any replacement competitive process for the grant of subsidies to renewable energy projects or competitive bidding processes for corporate power purchase agreements, of Company Group Projects where the disclosure of such information would constitute a breach of Section 4(1) of the Act. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of these Proposals, shall not be considered to constitute Company Group Project CSI;

Company Group Personnel means any officer, employee, representative or agent of, or person holding equivalent function in, a Company Group company;

CRU means the Commission for the Regulation of Utilities established pursuant to the Electricity Regulation Act 1999 as amended, and its successors;

Day-to-Day Running of ESB Competing Projects means the day to day management or operation of ESB Competing Projects including any role that requires knowledge of ESB CSI;

Day-to-Day Running of the Company Group Projects means the day to day management or operation of Company Group Projects including any role that requires knowledge of Company Group Project CSI;

DevCo means a company as described in the Agreement to which Coillte will transfer its onshore wind development business (including relevant business unit employees) and associated assets/goodwill, and in which ESB will acquire a 50% shareholding;

Electric Ireland means that part of ESB and its subsidiaries which carry out licensed supply under the trading name 'Electric Ireland';

ESB means the Electricity Supply Board (ESB) and any member of its Group (but shall not include any member of the Company Group). For the purposes of this definition "Group" shall mean any subsidiary or holding company of ESB, any subsidiary of any holding company of ESB from time to time other than ESB Networks and Electric Ireland;



ESB Directors means the directors appointed by ESB to a Company Group company, including alternate directors, and each individually an **ESB Director**;

ESB Competing Projects means any renewable energy project which is solely or jointly controlled by ESB or a member of ESB's Group, or in which ESB holds a minority interest and which is reasonably likely (in the opinion of the board of HoldCo), to compete with any of the Company Group Projects for subsidy through RESS auction(s) or through any other additional or replacement competitive process for the grant of subsidies to renewable energy projects or in the context of alternative routes to market (including, but not limited to, corporate power purchase agreements);

ESB CSI means any specific disaggregated information, including in relation to pricing in the context of any proposed RESS auction(s) or of any replacement competitive process for the grant of subsidies to renewable energy projects or competitive bidding processes for corporate power purchase agreements, of ESB Competing Projects where the disclosure of such information would constitute a breach of section 4(1) of the Act. For the avoidance of doubt, information that is available in any form to the public by lawful means, other than as a result of a breach of these Proposals, shall not be considered to constitute ESB CSI;

ESB Networks means (i) ESB Networks DAC, being the holder of the distribution system operator licence issued by the CRU under Section 14(1) of the Electricity Regulation Act 1999 as amended, and (ii) that ring-fenced part of ESB designated for the purposes of the transmission system owner and distribution system owner licences as issued by the CRU under Section 14(1) of the Electricity Regulation Act 1999 as amended, and any successor to any of these licensed roles within ESB;

ESB Personnel means any officer, employee, representative or agent of, or person holding equivalent function in, ESB other than the ESB Directors;

ESB Termination Date means the date on which (a) ESB disposes of its entire shareholding in HoldCo to a third party not owned or controlled by ESB; or (b) ESB acquires the entire issued share capital of HoldCo subject to conclusion of any review required under Part 3 of the Act; or (c) the Parties receive written confirmation from the Commission that the Proposals shall cease to apply;

HoldCo means an incorporated jointly controlled holding company to which ESB and Coillte will transfer all of the shares in DevCo;

Independent Chairperson has the meaning set out in para 2.2 below;

Independent Expert has the meaning set out in para 2.3 below;

Parties means ESB and Coillte;

RESS means the Renewable Electricity Support Scheme, as designed and implemented from time to time by the Irish Government by reference to (i) Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, and (ii) Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources;



Transaction Documents means the Agreement and all other agreements between the Parties comprising the Proposed Transaction; and

Term means the period beginning on the Commencement Date and ending for ESB on the ESB Termination Date and for Coillte on the Coillte Termination Date.

2 **Joint Undertakings:**

2.1 During the Term, if and to the extent that any ESB Director has ongoing responsibility for the Day-to-Day Running of ESB Competing Projects, the Parties undertake:

- a. to ensure that effective arrangements are in place within the Company Group to ensure that ESB Directors will not have access to Company Group Project CSI, such as through the arrangements outlined in the Agreement (or any other agreement that is entered into in relation to these matters under the Agreement); and
- b. to ensure that the ESB Directors appointed to the boards of DevCo and of HoldCo, with the exception of the Independent Chairperson, would not be provided with, or have access to, Company Group Project CSI and would not discuss or solicit Company Group Project CSI with or from Company Group Personnel.

(a) The Independent Chairperson

2.2 If and for so long as the criteria in paragraph 2.1 of these Proposals are met, the Parties further undertake that an independent director (i.e. the Independent Chairperson) will be jointly appointed by the Parties to chair the boards of both HoldCo and DevCo for the duration of the Term.

2.3 The Parties undertake that the Independent Chairperson's independence will be assessed by reference to objective criteria, such as those contained in the UK Code of Corporate Governance, in particular, whether the Independent Chairperson would:

- (a) be or have been an employee or director of either of the Parties within the preceding five years,
- (b) have or have had within the preceding one year a material business relationship with either of the Parties either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with either of the Parties,
- (c) receive or over the past five years have received additional remuneration from either of the Parties apart from a director's fee, participate in any share option or performance-related pay scheme operated by either of the Parties, and/or be a member of either of the Parties' pension schemes,
- (d) have close family ties with any of the Parties' directors or senior personnel,



- (e) hold cross-directorships or have significant links with other members of the boards of any member of the Company Group or any member of the Parties,
- (f) represent a significant shareholder of either Party, and
- (g) have served on a board of any member of the Company Group for more than nine years from the date of their first appointment.

2.4 With the exception of the first Independent Chairperson designate, [...], who was notified to the Commission on 2 December 2020, the Parties will notify the Commission in writing in advance of the appointment of a proposed Independent Chairperson and any proposed replacement Independent Chairperson, where relevant (the “Proposed Independent Chairperson”) and provide full contact details of the Proposed Independent Chairperson and the reasons justifying the Parties’ assessment that the Proposed Independent Chairperson is independent in accordance with paragraph 2.3 of the Proposals. For the avoidance of doubt, where any of the circumstances in paragraph 2.3(a)-(g) of the Proposals are considered by the Parties to apply, and the Parties nonetheless consider that the Proposed Independent Chairperson is independent, the Parties will explain in writing to the Commission why the Proposed Independent Chairperson is suitable to become the Independent Chairperson in such circumstances and should be appointed in accordance with paragraph 2.5 of the Proposals.

2.5 With the exception of the first Independent Chairperson designate, [...], who was notified to the Commission on 2 December 2020, the appointment of an Independent Chairperson and any proposed replacement will be subject to prior approval by the Commission (approval not to be unreasonably withheld or delayed and such approval to be granted by the application of the criteria set out in paragraph 2.3 of the Proposals, and any other objective standards, by the Commission) in accordance with the following procedure:

- (a) If the Commission does not reject the appointment of the Proposed Independent Chairperson by notice in writing to the Parties within ten working days of receipt of the notification made to the Commission by the Parties in accordance with paragraph 2.4 of these Proposals, the Proposed Independent Chairperson shall be deemed to have been approved by the Commission;
- (b) If the appointment of the Proposed Independent Chairperson is rejected by the Commission by notice in writing to the Parties within ten working days of receipt of the notification made to the Commission by the Parties in accordance with paragraph 2.4 of these Proposals, the Parties will propose to the Commission the name of another proposed Independent Chairperson (the “Second Proposed Independent Chairperson”) within thirty working days of being informed by the Commission of the rejection. If the Commission does not reject the appointment of the Second Proposed Independent Chairperson by notice in writing to the Parties within ten working days of the receipt of the new proposal, the Second Proposed Independent Chairperson shall be deemed to have been approved by the Commission;
- (c) If the Second Proposed Independent Chairperson is rejected by the Commission by notice in writing to the Parties within ten working days of receipt of the proposal made to the Commission by the Parties in accordance with sub-paragraph (b) above, the



Parties will propose to the Commission the name of another proposed Independent Chairperson (the “Third Proposed Independent Chairperson”) within thirty working days of being informed by the Commission of the rejection of the appointment of the Second Proposed Independent Chairperson. If the Commission does not reject the appointment of the Third Proposed Independent Chairperson by notice in writing to the Parties within ten working days of the receipt of the new proposal, the Third Proposed Independent Chairperson shall be deemed to have been approved by the Commission;

- (d) If the Third Proposed Independent Chairperson is rejected by the Commission by notice in writing to the Parties within ten working days of receipt of the proposal made to the Commission by the Parties in accordance with sub-paragraph (c) above, the Commission shall nominate a suitable person which the Parties shall appoint or cause to be appointed as Independent Chairperson; and
- (e) The procedure for the appointment of an Independent Chairperson set out in paragraphs 2.4 and 2.5 of these Proposals shall apply if at any time during the Term the Parties propose to replace the Independent Chairperson.

2.6 The Parties will ensure, to the extent reasonably possible and allowing for any period of vacancy which occurs by reference to any hand-over between the outgoing Independent Chairperson and the in-coming Independent Chairperson, that the position of Independent Chairperson will not be vacant at any time.

2.7 The Parties will procure that the duties of the Independent Chairperson shall include:

- a. ensuring that no Company Group Project CSI is discussed with or passed on, directly or indirectly, to any ESB Director, and
- b. implementing appropriate mechanisms for preventing Company Group Project CSI being discussed with or passed on, directly or indirectly, to any ESB Director.

2.8 The Parties will inform the Independent Chairperson of his/her role in facilitating the Parties’ compliance with the obligations and responsibilities under the Proposals and will ensure that the Independent Chairperson receives necessary training in this regard to assist in ensuring compliance with the Proposals as they apply to the Independent Chairperson.

2.9 Subject to paragraph 2.1 of the Proposals, nothing in the Proposals shall prevent the Company Group, or any director of a Company Group company, from taking steps necessary to comply with statutory or common law duties.

(b) Independent Expert(s)

2.10 The Independent Chairperson may be assisted by one or more Independent Expert(s) upon request by the Independent Chairperson in relation to the matters listed at paragraph 2.13 (a) and (b) of these Proposals.



- 2.11 The Parties undertake that the independence of the Independent Expert(s) shall be assessed by reference to objective criteria such as those contained in the UK Code of Corporate Governance and, in particular, those set out at paragraph 2.3 of the Proposals.
- 2.12 The Parties shall, within one month of the end of the relevant calendar quarter-year in which any Independent Expert(s) is/are appointed, provide written notice to the Commission of the date of the appointment, name and contact details of such Independent Expert(s) appointed during that quarter-year. For the avoidance of doubt, the appointment of any Independent Expert(s) will not be subject to prior approval by the Commission.
- 2.13 The Parties will procure that the role of Independent Expert(s), where requested by the Independent Chairperson, will be to:
- a. assist the Independent Chairperson with the identification of Company Group Project CSI, and/or
 - b. advise on the implementation (including activation) of appropriate mechanisms for preventing Company Group Project CSI being discussed with or passed on, directly or indirectly, to any ESB Director.
- 2.14 The Parties will inform the Independent Expert(s) of the existence of the Proposals and the role of the Independent Expert(s) in facilitating the Parties' compliance with the Parties' obligations and the responsibilities of the Independent Expert(s) under the Proposals upon appointment.

3 Undertakings by ESB

- 3.1 The following undertakings in Section 3 of the Proposals will apply only to activities connected with the implementation of the Proposed Transaction and operation of Company Group activities.
- 3.2 ESB undertakes that, for the Term of these Proposals,
- 3.2.1 ESB shall not (and shall not permit any ESB Personnel or, to the extent that any ESB Director has any ESB CSI, any ESB Director to) discuss with or pass on, directly or indirectly any ESB CSI to the Company Group or any Company Group Personnel other than, subject to the obligations under paragraph 3.2.5 of the Proposals, ESB Directors;
 - 3.2.2 ESB shall not (and shall not permit any ESB Personnel or, to the extent that any ESB Director has any ESB CSI, any ESB Director to) discuss with or pass on, directly or indirectly any ESB CSI to any Co-Development Project Partner or Co-Development Project Partner Personnel;
 - 3.2.3 ESB shall not (and shall not permit any ESB Personnel or any ESB Director to) discuss with or solicit, directly or indirectly, any Co-Development Project Partner CSI from any Co-Development Project Partner or any Co-Development Project Partner Personnel; and



3.2.4 ESB will ensure that (i) any person appointed by the ESB from time to time to act as company secretary within the Company Group; and (ii) the JV Chief Financial Officer (and any other ESB Personnel who may be appointed to a role in the Day-to-Day Running of the Company Group Projects) will have no ongoing involvement in the Day-to-Day Running of ESB Competing Projects.

3.2.5 At any time when the arrangements referred to in paragraph 2.1 of the Proposals are not in place (i.e. if none of the ESB Directors has ongoing responsibility for the Day-to-Day Running of ESB Competing Projects), ESB shall ensure that:

(a) any ESB Director has no ongoing responsibility for any function in the Day-to-Day Running of ESB Competing Projects; and

(b) ESB Directors shall not discuss with or provide to ESB Personnel involved in the Day-to-Day Running of the ESB Competing Projects any Company Group CSI.

4 **These Proposals shall not prevent the following:**

4.1 Disclosure by ESB to Coillte and/or disclosure by Coillte to ESB of any information pursuant to the Transaction Documents which is necessary to be provided to ESB or to Coillte in order to implement or operate the Proposed Transaction;

4.2 Disclosure by ESB to Coillte or the Company Group and/or disclosure by Coillte or the Company Group to ESB and/or as between any Company Group member and ESB/Coillte of (i) any information pursuant to the Transaction Documents for any arrangements necessary to negotiate and operate agreements between ESB and the Company Group (e.g. as applicable, power purchase agreements, engineering services, and as required to facilitate the operation of the share sale mechanisms set-out in the Agreement) or (ii) any information necessary for the exploration (e.g. due diligence and negotiation), execution or operation of any agreements executed or to be executed between ESB and the Company Group (including co-development agreements and commercial opportunities linked to land rights/access);

4.3 To the extent relevant, attendance by an ESB representative at meetings with AssetCo as contemplated by the Agreement;

4.4 ESB and Coillte exercising necessary shareholder approval rights on Reserved Matters (including but not limited to approval of the Business Plan and budgets) as defined and more fully set out in the Agreement; or

4.5 Disclosure by ESB, Coillte, or any member of the Company Group of any information which is required to comply with any applicable law or regulation (including, without limitation, disclosure which may be made by any director and/or officer of ESB, Coillte or of the Company Group in order to fulfil any statutory and/or fiduciary duty) or judicial or arbitral process of any competent jurisdiction, or which is required to be disclosed by any competent authority or which is dealt with in accordance with Regulation (EU) No. 596/2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission



Directives 2003/124/EC, 2003/125/EC and 2004/72/EC or any applicable national implementing measures.

5 Compliance

- 5.1 ESB and Coillte shall each submit to the Commission within six (6) months of the Commencement Date, and, at intervals of one year thereafter during the Term, a written certificate in the form set out in the Schedule 1 hereto (a "Compliance Certificate"), signed by a director of ESB and Coillte, or by a member of their respective executive management teams duly authorised by their respective boards, confirming that each of ESB and Coillte has complied with their respective obligations set out in the Proposals in the preceding period, and setting out changes, if any, to the Coillte Directors and/or the ESB Directors during the preceding period.
- 5.2 Each of ESB and Coillte shall inform respectively the relevant ESB Personnel and Coillte Personnel, all Company Group Personnel, and the ESB Directors and Coillte Directors of their obligations and responsibilities under the Proposals and shall provide training to them in that regard.
- 5.3 The Commission reserves the right to require each of ESB and Coillte to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission reasonably requires and which is necessary in order for the Commission to verify each of ESB's and Coillte's compliance with their respective obligations set out in the Proposals. Each of ESB and Coillte shall promptly provide to the Commission all such information in its possession.
- 5.4 The Proposals will come into effect on the Commencement Date and will remain in force during the Term. For the avoidance of doubt, the Proposals shall have no retrospective effect.

6 Review Clause

- 6.1 The Commission may, at its sole discretion, in response to a reasoned request from the Parties showing good cause, amend, revise or remove any of the Proposals, provided always that any such amendment, revision or removal is necessary, proportionate and objectively justifiable.



SCHEDULE 1

[Headed paper of ESB/Coillte]

[date]

Ibrahim Bah
Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Merger Notification M/20/005 – ESB/Coillte (JV)

Dear Mr. Bah,

I refer to Merger Notification M/20/005 – ESB/Coillte (JV) whereby a joint venture would be created by the Electricity Supply Board (“ESB”) and Coillte Cuideachta Ghníomhaíochta Ainmnithe (“Coillte”) for purposes of developing and constructing renewable energy generation facilities was notified to the Competition and Consumer Protection Commission on 12 February 2020 under Part 3 of the Competition Act 2002 (as amended) (“the Proposed Transaction”).

The Commission issued its Determination approving the Proposed Transaction on [] February 2021.

In accordance with the terms of the proposals given by ESB and Coillte to the Commission on 28 January 2021 in relation to the Proposed Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon ESB and Coillte (“the Commitments”), we hereby confirm ESB’s/Coillte’s compliance with the terms of the Commitments during the period commencing on [the date of the Determination/date of the previous certificate issued by ESB/Coillte] and ending on the date hereof.

[Since [date], there have been no changes to the Coillte Directors or ESB Directors]/[Since [date], the following change(s) to the Coillte Directors and/or the ESB Directors have/has been made: []].

Yours faithfully,

[Name]

[Duly Authorised Member of the ESB Executive Management Team / Director ESB [AND] Duly Authorised Member of the Coillte Executive Management Team / Director Coillte]



M/20/005 – ESB/COILLTE (JV)

SECTION 20(3) PROPOSALS SUBMITTED BY COILLTE (“Proposals”)

Recitals

- a) On 12 February 2020, the proposed creation of a full function joint venture (“JV”) by Coillte Cuideachta Ghníomhaíochta Ainmnithe (“Coillte”) and the Electricity Supply Board (“ESB”) was notified to the Commission under Part 3 of the Act.
- b) Pursuant to section 20(3) of the Act, Coillte has submitted to the Commission these Proposals relating to the Proposed Transaction for the purpose of ameliorating any possible effect of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Coillte.
- c) The Proposals submitted by Coillte are intended to strengthen existing measures to prevent the exchange between Coillte and the JV of competitively sensitive information of third party land customers of Coillte which would constitute a breach of section 4(1) of the Act.

Definitions

“Co-Development Agreement” means any agreement entered into from time to time between any company in the Company Group and any third party for the joint development of renewable energy facilities;

“Co-Development SPV” means any special purpose vehicle relating to a Co-Development Project;

“Co-Development SPV Personnel” means any person employed by a Co-Development SPV other than a Coillte JV Director;

“Co-Development Project” means any project to be developed pursuant to any Co-Development Agreement to which JV DevCo is a party, from time to time;

“Coillte Board” means the board of directors of Coillte;

“Coillte JV Director” means any person appointed by Coillte to the board of any JV Company or Co-Development SPV, including as an alternate director;

“Coillte Land” means land owned or occupied by Coillte or land to which Coillte is beneficially entitled;

“Commencement Date” means the date that the Proposed Transaction is completed, being the date following the transfer by Coillte of its onshore wind development business (including relevant business unit employees) and associated assets/goodwill to DevCo on which ESB acquires a 50% interest in DevCo;

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

“Company Group” means JV Holdco together with its subsidiaries from time to time and all undertakings directly or indirectly controlled by JV Holdco (which for the avoidance of doubt includes the JV DevCo). In this context, the notion of control shall be interpreted pursuant to section 16 of the Act;

“Day to Day Running of Third Party Land Access Request” means any role in the day to day management of the receipt, negotiation and execution of Third Party Land Access Requests;



“JV Company” means a member of the Company Group;

“JV Company Personnel” means any person employed by a JV Company other than a Coillte JV Director;

“JV Devco” means a company as described in the shareholders’ agreement (and any amendments thereto) between Coillte, ESB Wind Development Limited; JV HoldCo; and JV DevCo, to which Coillte will transfer its onshore wind development business (including relevant business unit employees) and associated assets/goodwill, and in which ESB will acquire a 50% shareholding;

“JV Holdco” means the company to be established to hold, directly or indirectly, the Parties’ interests in the JV and its successors;

“Land Access Request” means any request, including informal contacts and enquiries, received by Coillte for Land Rights;

“Land Rights” means rights over, or the use of, Coillte Land, whether by way of sale, lease, option or otherwise (e.g. by way of right of way, wayleave, easement or licence) for the purposes of development of renewable energy facilities;

[...];

“Termination Date” means the date on which (a) Coillte disposes of its entire shareholding in the JV Holdco; or (b) Coillte acquires the entire issued share capital of JV Holdco subject to conclusion of any review required under Part 3 of the Act; or (c) Coillte receives written confirmation from the Commission that these Proposals shall cease to apply;

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

“The Term” means the period beginning on the Commencement Date and ending on the Termination Date;

“Third Party” means any person, company or other entity which is not a JV Company or Co-Development SPV;

“Third Party CSI” means, any specific disaggregated information concerning a Third Party project for development of renewable energy facilities received by Coillte further to a Third Party Land Access Request (including, but not limited to the following insofar as either alone or in combination their disclosure would constitute a breach of section 4(1) of the Act: information concerning the price agreed by Coillte and the Third Party in respect of the Third Party Land Access Request; the location and size of a potential site to be developed by the Third Party; the potential electricity output of a site to be developed by the Third Party; and/or the number and type of turbines to be located on a potential site to be developed by the Third Party) where the disclosure of such information would constitute a breach of section 4(1) of the Act. For the avoidance of doubt, information that is available in any form to the public by lawful means (including available in public registers such as those maintained by the Property Registration Authority, any local authority or planning authority) other than as a result of a breach of the Proposals, shall not be considered to constitute “Third Party CSI”; and

“Third Party Land Access Request” means any Land Access Request received by Coillte from a Third Party.

Proposals



1. Coillte shall, within one month of the Commencement Date, provide to the Commission in writing the name and contact details of any person or persons appointed to serve as a Coillte JV Director.
2. During the Term, Coillte undertakes that:
 - (a) Coillte shall ensure that any person appointed to serve as a Coillte JV Director has no ongoing responsibility for the Day to Day Running of Third Party Land Access Requests;
 - (b) Coillte shall not (and shall not permit any Coillte personnel to) discuss with or pass on, directly or indirectly, to any person appointed to serve as a Coillte JV Director any Third Party CSI;
 - (c) Coillte shall not permit any person appointed to serve as a Coillte JV Director to discuss with or solicit from any Coillte personnel any Third Party CSI;
 - (d) Coillte shall not (and shall not permit any Coillte personnel to) discuss with or pass on, directly or indirectly, to any JV Company or Co-Development SPV (including JV Company Personnel or Co-Development SPV Personnel) any Third Party CSI; and
 - (e) For the avoidance of doubt, the obligations set out in Clause 2 (a)-(d) of the Proposals will not apply:
 - (i) to any information which at the time of disclosure or thereafter is generally available to or known by the public (other than as a result of its disclosure by Coillte or Coillte personnel);
 - (ii) to any information which was or becomes available to any JV Company, Co-Development SPV or Coillte JV Director from a person, other than Coillte (or any of its directors, employees, agents, consultants, representatives or advisers);
 - (iii) to any information relating to a Third Party which is necessary for Coillte to disclose to a JV Company or Co-Development SPV for the purposes of facilitating a Land Access Request or development activities enquiry received from a Third Party or a JV Company or Co-Development SPV, provided that such information is (A) disclosed with the consent of the Third Party; and (B) limited to the minimum information necessary to facilitate the Land Access Request or development activities enquiry; and
 - (iv) to any information which is required to be disclosed by judicial order or action or any applicable law, regulation or rule of any recognised investment exchange.
3. During the Term, Coillte undertakes that:
 - (a) Coillte shall, within one month of the appointment of the Chairperson, provide the Commission with the name and contact details of the person appointed pursuant to section 15(2)(b) of the Forestry Act 1988 to serve as the chairperson of the Coillte Board by the Minister of Agriculture, Food and the Marine with the consent of the Minister for Public Expenditure and Reform (the “Chairperson”).
 - (b) Coillte shall take all reasonable steps to ensure that the position of Chairperson is not vacant at any time, and that any acting chairperson of the Coillte Board is also bound



- by the obligations of the Chairperson;
- (c) Coillte shall procure that the Chairperson shall be responsible for putting in place and administering policies and procedures to ensure that Coillte personnel (including Coillte Board members) do not discuss with or pass on, directly or indirectly, to any person appointed to serve as Coillte JV Director any Third Party CSI; and
 - (d) Coillte shall ensure that the Chairperson, and any acting chairperson, shall not simultaneously serve as an officer, director, representative, agent or person holding equivalent functions in the Company Group.
4. In addition to its obligations under Clauses 2, 3 and 4 of the Proposals, Coillte undertakes to implement all such measures as are necessary to ensure that no Third Party CSI is passed, directly or indirectly, from Coillte to the Company Group (including, for the avoidance of doubt, to any person appointed to serve as Coillte JV Director) and shall include the following measures:
- (a) [...], and
 - (b) [...].
5. During the Term, Coillte undertakes that:
- (a) [...];
 - (b) [...]; and
 - (c) [...].

Compliance

6. Coillte shall provide written notice to the Commission in advance of any changes to any person or persons appointed to serve as a Coillte JV Director and shall promptly provide to the Commission the name and contact details of any person who is to replace the prior nominated Coillte JV Director. Coillte shall take all reasonable steps to provide such written notice one month in advance of any change. For the avoidance of doubt, the Commission's approval is not required to appoint a Coillte JV Director.
7. Coillte shall submit to the Commission within six (6) months of the Commencement Date, and at intervals of one year thereafter, a written certificate in the form set out in Schedule 1 hereto (a "Compliance Certificate"), signed by a director of Coillte, or a member of Coillte's executive management duly authorised by the Coillte Board, confirming that Coillte has complied with its obligations set out in these Proposals in the preceding period, and setting out changes, if any, to any person or persons appointed to serve as a Coillte JV Director and to any person appointed to serve as Chairperson.
8. Coillte shall inform all persons appointed to serve as a Coillte JV Director of their role in facilitating Coillte's compliance with the obligations and responsibilities under these Proposals and shall provide training to them in this regard.
9. Coillte shall inform the person appointed to serve as Chairperson of their role in facilitating Coillte's compliance with the obligations and responsibilities under these Proposals and shall



provide training to them in this regard.

10. Coillte shall inform all Coillte personnel that have ongoing responsibility for the Day to Day Running of Third Party Land Access Requests of their responsibilities pursuant to the Proposals and shall provide both training and written guidelines to them in that regard.
11. The Commission reserves the right to require Coillte to provide to the Commission, at any time and on reasonable notice, such additional information as the Commission reasonably requires and which is necessary in order for the Commission to verify Coillte's compliance with the obligations set out in these Proposals. Coillte shall promptly provide to the Commission all such information in its possession.
12. These Proposals shall come into effect on the Commencement Date and shall remain in force during the Term. Within one week of the Commencement Date, Coillte shall notify the Commission in writing that the criteria in the definition of Commencement Date have been met.

Review Clause

13. The Commission may, at its sole discretion, in response to a reasoned request from Coillte showing good cause, amend, revise or remove any of the Proposals, provided always that such amendment, revision or removal is necessary, proportionate and objectively justifiable.



SCHEDULE 1 TO THE PROPOSALS

[Coillte Headed Paper]

[Date]

Ibrahim Bah
Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Merger Notification M/20/005 – ESB/Coillte (JV)

Dear Mr. Bah,

I refer to Merger Notification M/20/005 – ESB/Coillte (JV) in relation to a proposed joint venture between the Electricity Supply Board (“ESB”) and Coillte Cuideachta Ghníomhaíochta Ainmnithe (“Coillte”) which was notified to the Competition and Consumer Protection Commission (“Commission”) on 12 February 2020 (“the Proposed Transaction”).

The Commission issued its Determination approving the Proposed Transaction on [date].

In accordance with the terms of the proposals given by Coillte to the Commission on [] in relation to the Proposed Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Coillte (“the Commitments”), I hereby confirm Coillte’s compliance with the terms of the Commitments during the period commencing on [the date of the Determination/date of the previous certificate issued by Coillte] and ending on the date hereof.

[Since [date], there have been no changes to the Coillte JV Director/Since [date], the following change(s) to the Coillte JV Director have/has been made: []].

[Since [date], there have been no changes to the Chairperson/Since [date], the following change(s) to the Chairperson have/has been made: []].

Yours faithfully,

[Name]

[Duly Authorised Member of the Coillte Executive Management Team / Director of Coillte]