SCHEDULE 1

Amendments of primary legislation

PART 1

Amendments of Communications Act 2003

34. For section 89B substitute—

"**89B Functional separation conditions: matters to be considered by OFCOM**

(1) This section applies where OFCOM propose to apply a functional separation condition to a person.

(2) OFCOM must consider the expected impact of the condition on—

(a) OFCOM;

(b) the person on whom the condition is to be imposed;

(c) the staff of the entity to which activities are to be transferred;

(d) the electronic communications sector as a whole;

(e) incentives to invest in the electronic communications sector, particularly with regard to the need to ensure social and territorial cohesion;

(f) competition in the services market affected by the condition; and

(g) other persons who in OFCOM's opinion are likely to be affected by the condition, including, in particular, consumers.

(3) OFCOM must also consider—

(a) evidence relevant to the conclusions mentioned in section 89A(1)(c) and (d);

(b) whether there is little or no prospect of effective and sustainable infrastructure based competition within a reasonable timeframe;

(c) whether a functional separation condition would be the most effective means of addressing important and persisting competition problems or market failures identified by OFCOM; and

(d) the impact that the obligations contained in the condition are likely to have on SMP services conditions set in relation to the services markets which, in OFCOM's opinion, will be affected by the proposed condition."

Commencement Information

I1 Sch. 1 para. 34 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1(2)

Changes to legislation:
There are currently no known outstanding effects for the The Electronic Communications and Wireless Telegraphy (Amendment etc.) (EU Exit) Regulations 2019, Paragraph 34.