

## SCHEDULE 5

Regulation 2

### Communications

#### Interpretation

**1.** In this Schedule—

“cable landing station” means a cable landing station for a submarine cable system;

“electronic communications service” has the meaning given by section 32(2) of the Communications Act 2003<sup>(1)</sup>

“public electronic communications network” means a public electronic communications network as defined by section 151(1) of the Communications Act 2003<sup>(2)</sup> and includes a submarine cable system that is provided for purposes which include the purpose of making electronic communications services available to the public;

“public electronic communications service” means a public electronic communications service as defined by section 151(1) of the Communications Act 2003<sup>(3)</sup>, and includes an electronic communications service that is provided by means of a submarine cable system so as to be available for use by members of the public;

“submarine cable system” means a system of fibre optic cables which—

- (a) are beneath the sea (whether on or in the seabed or in a tunnel); and
- (b) are used for the conveyance of signals.

#### Public electronic communications providers

**2.—**(1) A qualifying entity which—

(a) carries on activities which consist of or include either or both of the following—

- (i) providing a public electronic communications network;
- (ii) providing a public electronic communications service; and

(b) meets the turnover condition in sub-paragraph (2).

(2) The turnover condition is that the turnover of the entity’s relevant business for the relevant period is at least £50,000,000.

(3) In sub-paragraph (2)—

(a) “relevant business” means so much of any business carried on in the United Kingdom by the entity in question or any of its associated entities as consists of either or both of the following—

- (i) the provision of a public electronic communications network;
- (ii) the provision of a public electronic communications service;

(b) “relevant period” means—

- (i) the period of one year ending with the 31st March last before the time when a person gains control of the qualifying entity, by virtue of one or more of the cases described in subsection (2), (5) or (6) of section 8 of the Act; and

<sup>(1)</sup> 2003 c. 21. Section 32(3) was substituted by [S.I. 2020/1419](#).

<sup>(2)</sup> There are amendments to section 151(1) not affecting the definition of “public electronic communications network”. The definition of “electronic communications services” in section 32(2) of the Communications Act 2003 was amended by [S.I. 2011/1210](#).

<sup>(3)</sup> There are amendments to section 151(1) not affecting the definition of “public electronic communications service”. The definition of “electronic communications service” in section 32(2) of the Communications Act 2003 was substituted by [S.I. 2020/1419](#).

- (ii) in the case of an entity which at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which it has been carrying it on.

(4) For the purposes of sub-paragraph (3)(a), another qualifying entity is an associated entity of the entity in question if—

- (a) the entity in question owns, or has a controlling interest in, the other qualifying entity;
- (b) the other qualifying entity owns, or has a controlling interest in, the entity in question; or
- (c) a person or group of persons owns, or has a controlling interest in, both entities.

(5) For the purposes of sub-paragraph (4), a person has a controlling interest in a qualifying entity if the person holds more than 50% of the shares or voting rights in the entity; and subsections (3), (4), and (7) of section 8 of the Act apply for the interpretation of this sub-paragraph.

(6) For the purposes of this paragraph—

- (a) turnover is to be calculated in conformity with accounting practices and principles which are generally accepted in the United Kingdom;
- (b) turnover is to be limited to the amounts derived by an entity from the relevant business after deduction of sales rebates, value added tax and other taxes directly related to amounts so derived;
- (c) where the relevant business of the entity in question is carried on by two or more entities that each prepare accounts the turnover shall be calculated by adding together the turnover of each, except that no account shall be taken of any turnover resulting from the supply of goods or the provision of services between them.

### **Associated facilities**

**3.—**(1) A qualifying entity carrying on activities which consist of or include the making available of anything that—

- (a) is an associated facility by reference to a qualifying network or qualifying service; and
- (b) is not excluded by sub-paragraph (2) or (3).

(2) An associated facility consisting of a building or an entry to a building is excluded by this sub-paragraph unless the main purpose of the building is to host a network element that is active.

(3) An associated facility other than a building or an entry to a building is excluded by this sub-paragraph if the associated facility is an element (such as a pipe, mast, duct, antenna installation, tower or pole) which—

- (a) is not itself active; and
- (b) is designed merely to host either or both of the following—
  - (i) other network elements that are not active;
  - (ii) cables (including strands of optical fibre).

(4) In this paragraph—

“associated facility” has the meaning given by section 32(3) of the Communications Act 2003(4) but as if the reference in that provision to a “facility, element or service” included a reference to a cable landing station;

“qualifying network” means a public electronic communications network provided by a qualifying entity falling within paragraph 2;

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(4) Section 32(3) was substituted by [S.I. 2011/1210](#).

“qualifying service” means a public electronic communications service provided by a qualifying entity falling within paragraph 2.

#### **Repair or maintenance of submarine cable systems or cable landing stations**

4.—(1) A qualifying entity carrying on activities which consist of or include the provision of services for the repair or maintenance of—

- (a) a submarine cable system (in the United Kingdom or elsewhere) forming part of a public electronic communications network that—
  - (i) is provided in the United Kingdom by a qualifying entity falling within paragraph 2; or
  - (ii) interconnects with a public electronic communications network provided in the United Kingdom by a qualifying entity falling within paragraph 2; or
- (b) a cable landing station in the United Kingdom that is used in connection with a public electronic communications network or public electronic communications service provided in the United Kingdom by a qualifying entity falling within paragraph 2.

(2) In this paragraph “interconnect” is to be read in accordance with section 151(2) of the Communications Act 2003.

#### **Information systems**

5.—(1) A qualifying entity carrying on activities that consist of or include supplying to persons in the United Kingdom services which consist of or include one or more of the following—

- (a) providing a top-level domain name registry which, in any relevant 168-hour period, serviced 14 billion or more queries from devices located in the United Kingdom for domains registered within the Internet Corporation for Assigned Names and Numbers;
- (b) providing a domain name system resolver service which, in any relevant 168-hour period, serviced 500,000 or more different Internet Protocol addresses used by persons in the United Kingdom;
- (c) providing a domain name system authoritative hosting service servicing 100,000 or more domains registered to persons with an address in the United Kingdom.

(2) A qualifying entity which—

- (a) carries on activities which consist of or include supplying to persons in the United Kingdom services which consist of or include providing an internet exchange point; and
- (b) has 30% or more of the market share among operators of internet exchange points in the United Kingdom in terms of interconnected autonomous systems.

(3) In this paragraph—

“domain name system” has the meaning given to “Domain Name System” in paragraph 10(5)(a) of Schedule 2 to the Network and Information Systems Regulations 2018<sup>(5)</sup>;

“internet exchange point” has the meaning given in paragraph 10(5)(c) of Schedule 2 to the Network and Information Systems Regulations 2018;

“relevant 168-hour period” means any consecutive period of 168 hours falling within the 12 months ending with the time when a person gains control of the qualifying entity by virtue of one or more of the cases described in subsection (2), (5) or (6) of section 8 of the Act;

“top-level domain name registry” has the meaning given in paragraph 10(5)(d) of Schedule 2 to the Network and Information Systems Regulations 2018.

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(5) [S.I. 2018/506](#); paragraph 10(5)(a) of Schedule 2 was amended by [S.I. 2020/1245](#).

**Draft Legislation:** *This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 No. 1264*