

## **ISPA response to National Security and Investment: Sectors in Scope of the Mandatory Regime Consultation**

ISPA is the trade association for providers of internet services in the UK. ISPA has approximately 150 members, 90% of which are SMEs as well as large multinational companies. We are proud to be an organisation which covers the whole Internet value chain, including companies that provide access, hosting and other online services. We represent the full ecosystem including communications providers that serve consumers and businesses, those that build their own networks and those that resell services via the fixed and wireless networks.

### **Introduction**

In the consultation response, we focus specifically on the scope of the proposed definitions as they apply to ISPA members. However, in addition we are concerned about the following general points:

- A clear definition of National Security is necessary as a starting point to enable companies to self-assess risk and to ensure the regulatory goal posts are not moved once the regime commences.
- The open-ended nature of the communications definition does not seem to be accurately reflected in the impact assessment and as a result, there is currently no credible evidence of how the telecoms communications sector will be affected by the new regime.
- The lack of clear evidence of the impact on the sector is compounded by the implementation of a variety of other security and non-security interventions in the sector.
- This is further compounded by the fact that the Telecommunications sector is already effectively regulated – Government and regulators are already provided with extensive oversight mechanisms via the Communications Act, the new Telecommunications Security Bill and the powers stemming from the implementation of the European Electronic Communications Code.
- Overall, the regime risks diverting investment away from the rollout of gigabit capable infrastructure and risks undermining the vibrancy of the sector which is currently regarded as highly attractive to investors from in and outside the UK.
- As a result, it is vital that the notification regime, including the definitions, are specific and targeted, and that they are accompanied by clear guidance, so that businesses have regulatory certainty. We would also welcome the publication of reasoned decision (redacted where necessary) to provide further guidance to the sector.

### **Responding to specific consultation questions**

#### **1. Are the sector definitions sufficiently clear to enable investors and businesses to self assess whether they must notify and receive approval for relevant transactions? If not, how can the definitions be improved?**

It is extremely important that companies in affected sectors potentially falling within scope of the mandatory notification regime have regulatory certainty when contemplating investments and M&A transactions. The definitions must be tightly and narrowly defined, and the current proposals lack sufficient clarity.

The communications sector definition is so all-encompassing that businesses and investors will likely decide to notify every single merger & acquisition that involves a sufficient level of non-UK interests. In addition, many businesses in the communications sector could arguably fall into a range of other mandatory reporting definitions, most notably data infrastructure, critical suppliers to Government, and artificial intelligence. This again suggests that Government will need the capacity to scrutinise up to 100% of all mergers & acquisitions in the communications sector. To avoid such a mandatory or default notification scenario, the definitions need to be significantly tightened and clear guidance must be provided.

On a more specific point, several of the proposed sector definitions, including the one for Communications, refer to “an entity carrying on activities in the United Kingdom”. More clarity is needed regarding which companies will be in scope as “carrying on activities in the United Kingdom”.

## **2. To what extent are technical and scientific terms correct and sufficiently clear and commonly understood for the purposes of determining relevant activities?**

It is currently not clear how the broadly, newly created categories of “associated telecoms supply chain” and “digital infrastructure companies” will apply. For example, is the list of digital infrastructure companies provided in the consultation document exhaustive or not? In the same way, at what point in time would a company supplying services or goods to a communications company be regarded as belonging to the associated supply chain? Moreover, the recently published online harms response has suggested another definition of “infrastructure service providers” (or “internet infrastructure providers”) and it would be helpful to understand how the various definitions match up across regulatory regimes.

We are also concerned by the definition of “Artificial Intelligence” which is far too broad. Particularly the reference to “statistical prediction based on uncertain or incomplete information”, which risks catching a very large number of low-risk activities that many ISPA members will engage in.

## **5. Do these definitions strike the right balance between safeguarding national security and minimising the burdens placed on businesses and investors? Is it possible to narrow the scope of the definitions without compromising national security?**

The definitions do not strike a proportionate balance as they would likely lead to the reporting of up to 100% of all mergers & acquisitions in the communications sector and effectively create a mandatory or default notification regime. This is clearly not proportionate and could deter foreign investment in the UK and lead to a reduction in the number of smaller challenger telecoms companies being established in the UK.

Similar regimes in other countries, e.g., Germany or France, have put in place de-minimis and threshold values for communications companies. Moreover, the UK implementation of the NIS Directive has adopted a threshold-based approach, and thresholds are also present in the Communications Act and the forthcoming implementation of the telecoms security regulations. Accordingly, we strongly encourage the consideration of such an approach in the UK.

**10. Is the definition sufficient to capture all our interests to enable us to respond to potential and exceptional national security concerns in particular equipment and services suppliers and digital infrastructure?**

*No comment*

**11. Is the definition clear that the Communications sector definition includes entities that provide public and private electronics communications networks, and their associated facilities?**

No comment.

**12. How can the definition be narrowed to exclude private communications networks that do not pose a risk to national security?**

*The introduction of de-minimis thresholds might help to achieve this.*