

Enterprise Act 2002 Undertakings

ANTICIPATED ACQUISITION BY CONNECT BIDCO LIMITED OF INMARSAT PLC

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR DIGITAL, CULTURE, MEDIA AND SPORT BY

CONNECT BIDCO LIMITED, INCORPORATED AND REGISTERED IN GUERNSEY WITH COMPANY NUMBER 66187 WHOSE REGISTERED OFFICE IS AT REDWOOD HOUSE, ST JULIAN'S AVENUE, ST PETER PORT, GUERNSEY GY1 1WA ("CONNECT BIDCO"); AND

INMARSAT PLC, INCORPORATED AND REGISTERED IN ENGLAND AND WALES WITH COMPANY NUMBER 04886072 WHOSE REGISTERED OFFICE IS AT 99 CITY ROAD, LONDON, EC1Y 1AX ("INMARSAT")

WHEREAS:

(A) On 25 March 2019 Connect Bidco and Inmarsat announced the proposed acquisition by Connect Bidco Limited of the entire issued and to be issued share capital of Inmarsat plc (the "**Transaction**");

(B) On 22 July 2019 the Secretary of State issued a public interest intervention notice to the Competition and Markets Authority ("**CMA**") under section 42 of the Enterprise Act 2002 (the "**Act**");

(C) On 17 September 2019, the CMA reported to the Secretary of State in accordance with section 44(2) of the Act, which was within the period specified by the Secretary of State, summarising representations received by it relating to the national security public interest consideration specified in the public interest intervention notice;

(D) The Secretary of State has the power to refer the Transaction under section 45 of the Act to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 or may, instead of making such a reference, accept undertakings in lieu under paragraph 3(2) of Schedule 7 to the Act; and

(E) The Secretary of State considers the undertakings given below by Connect Bidco and Inmarsat are appropriate to remedy, mitigate or prevent any of the effects adverse to the public interest within the meaning of section 58(1) of the Act which may be expected to result from the creation of the relevant merger situation, and the Secretary of State shall in consequence not make a reference to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

Connect Bidco and Inmarsat therefore give to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of this relevant merger situation.

1. INTERPRETATION AND DEFINITIONS

In these Undertakings:

- 1.1. where reference is made to any company then in the event of any merger, joint venture or acquisition or internal re-organisation or sale either private or to the public, such reference shall, subject to clause 4.1 below, be interpreted as applying to the equivalent or successor organisation in the new structure;
- 1.2. except where the context does not allow, the singular shall include the plural and the plural shall include the singular;
- 1.3. reference to a clause is a reference to a clause within these undertakings;
- 1.4. any obligation on a party to “procure” a certain outcome shall mean an obligation for that party to exercise, lawfully and in a manner that does not otherwise put such party in breach of any fiduciary duty, any voting rights and use any and all powers vested in it from time to time as a holder of securities, shareholder, director, officer and/or employee and attorney, or through any contractual arrangements, to ensure compliance with that obligation so far as it is reasonably able to do so, whether acting alone or (to the extent that he or it is lawfully able to contribute to ensuring such compliance collectively) acting with others, provided that such obligation shall not require the relevant party to take any action which would be materially prejudicial to the interests of that party or its subsidiaries nor shall it require that party to incur unreasonable or disproportionate costs to procure the relevant outcome;
- 1.5. “**Board**” means the board of directors of a company;
- 1.6. “**Classified**” means protectively marked in accordance with the system of protective marking defined in the Cabinet Office ‘Government Security Classifications’ document as updated¹;
- 1.7. “**CMA**” means the UK Competition and Markets Authority;
- 1.8. “**Co-Investors**” means each of the investors (other than the Investing Funds) who are, from time to time, following a syndication process by the Apax IX Fund and the WPGG Fund, indirectly invested in Connect Bidco;
- 1.9. “**Consortium Members**” means each member of the consortium of investment funds managed and/or advised by Warburg Pincus LLC, Apax Partners LLP, Canada Pension Plan Investment Board and Ontario Teachers’ Pension Plan Board that will acquire indirect control of Inmarsat as a result of the Transaction;
- 1.10. “**Connect Bidco**” means Connect Bidco Limited;

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715778/May-2018_Government-Security-Classifications-2.pdf

- 1.11. **“Customer”** refers to a situation where the Ministry of Defence is either a direct purchaser of products or services from Inmarsat or a UK Subsidiary or is specified under the applicable contract as the ultimate user of products or services procured from Inmarsat or a UK Subsidiary by a third party for the Ministry of Defence;
- 1.12. **“Distribution Agreement”** means an agreement between a UK Subsidiary and a third-party distribution partner for the supply of Specified Services;
- 1.13. **“Director”** means a director of the Board who has voting or decision-making rights irrespective of whether the individual is in an executive position or not;
- 1.14. **“Effective Date”** means the date on which these undertakings are accepted by the Secretary of State, except where the Transaction is not completed, in which case these undertakings shall not take effect until the date of such completion;
- 1.15. **“Exit”** means a Sale, an Asset Sale, an Exit Listing or a Merger, where:
- 1.15.1. **“Sale”** means the direct or indirect sale of all or a majority of Inmarsat’s shares to a Third-Party Buyer or related Third-Party Buyers, in either case, on arm’s length terms as part of a single transaction or a series of related transactions;
- 1.15.2. **“Asset Sale”** means a sale of all or substantially all the Inmarsat Group’s business assets and undertakings to a single Third-Party Buyer or to one or more Third-Party Buyers as part of a single transaction or series of connected transactions;
- 1.15.3. **“Exit Listing”** means the admission to listing of some or all of the ordinary issued share capital (or such other class of share capital which comprises the primary voting shares) of Inmarsat, Connect Bidco or any New Holding Company (such entity being the **“ListCo”** for the purposes of this form of Exit) to trading on a recognised stock exchange, provided that upon such listing becoming effective none of (i) the Consortium (ii) any one Consortium Member nor (iii) any Consortium Members acting together, Controls the ListCo; and
- 1.15.4. **“Merger”** means any transaction or series of transactions, including but not limited to, an issue of shares in Connect Bidco (and/or in any New Holding Company) following which none of (i) the Consortium (ii) any one Consortium Member nor (iii) any Consortium Members acting together, Controls the Inmarsat Group.

For the purposes of this definition of **“Exit”**:

“Control” has the same meaning as in section 26 of the Act;

“New Holding Company” means any new holding company of Inmarsat or Connect Bidco formed for the purpose of facilitating an Exit; and

“Third-Party Buyer” means a bona fide purchaser that is not an affiliate of a Consortium Member.

- 1.16. **“Government Contractor”** means a government contractor within the meaning of section 12 of the Official Secrets Act 1989 which provides, or is employed in the provision of, goods or services to the Ministry of Defence under a Security Aspects Arrangement;
- 1.17. **“Inmarsat”** means Inmarsat plc;
- 1.18. **“Inmarsat Group”** means Inmarsat and any subsidiary from time to time of Inmarsat, including subsidiaries created after the date of completion of the Transaction. A reference to a subsidiary means a subsidiary as defined in section 1159 of the Companies Act 2006;
- 1.19. **“Investing Fund”** means each of the four entities indirectly acquiring an equity interest of up to 30% together with voting rights of a maximum of 25% in Inmarsat as part of the Transaction, namely the Apax IX Fund, the WPGG Fund, Canada Pension Plan Investment Board and Ontario Teachers’ Pension Plan Board;
- 1.20. **“Limited Partner Investors”** means the limited partners of each of the Investing Funds;
- 1.21. **“List X Area”** means any secure area that has been approved to hold Sensitive Material within the Inmarsat facilities at 99 City Road, Old Street, London, EC1Y 1AX, or any additional Inmarsat facility that has been or is, subsequent to the Effective Date, granted List X status by the Defence Security and Assurance Services in accordance with the Security Requirements for List X Contractors;
- 1.22. **“List X Contractor”** means a government contractor granted List X status by the Defence Security and Assurance Services in accordance with the Security Requirements for List X Contractors;
- 1.23. **“Ministry of Defence”** means the UK Secretary of State for Defence;
- 1.24. **“Notice”** means the notice period required for the withdrawal of a Specified Service from operation, which will be 12 months, or such other period provided for in the relevant Distribution Agreement, whichever is the longer;
- 1.25. **“Overall Control”** means with respect to a person (a) ownership of more than 50% of the voting securities of such person, (b) the right to appoint, or cause the appointment of, more than 50% of the members of the board of directors (or similar governing body) of such person or (c) the right to manage, or direct the management of, on a discretionary basis, the business, affairs and/or assets of such person;
- 1.26. **“Secretary of State”** means the UK Secretary of State for Digital, Culture, Media and Sport;

- 1.27. **“Security Aspects Arrangement”** means a contractual arrangement entered into between the Ministry of Defence and a member of the Inmarsat Group which incorporates DEFCON 659/A – Security Measures or any specific, enhanced arrangement which concerns assets or information marked “Official-Sensitive” or Classified as “Secret” or “Top Secret” by an authorised UK government representative, and the Security Requirements for List X Contractors;
- 1.28. **“Security Undertakings”** means the undertakings made in clause 2;
- 1.29. **“Security Requirements for List X Contractors”** means the Security Requirements for List X Contractors v10.0² or any updated version published by the UK Cabinet Office;
- 1.30. **“Sensitive Material”** means any UK government software, information, thing or documentation provided pursuant to a Security Aspects Arrangement;
- 1.31. **“Specified Services”** means the FleetBroadband, BGAN, L-TAC and SwiftBroadband Services supplied by Inmarsat Group directly or indirectly to the Ministry of Defence;
- 1.32. **“Transaction Parties”** means Inmarsat and Connect Bidco;
- 1.33. **“UK”** means the United Kingdom of Great Britain and Northern Ireland; and
- 1.34. **“UK Subsidiary”** means a subsidiary of Inmarsat that is incorporated in England and Wales as at the Effective Date.

2. SECURITY UNDERTAKINGS

Each of Inmarsat and Connect Bidco undertakes the following in respect of itself, and

- in respect of any obligations on Inmarsat, Connect Bidco undertakes to procure that Inmarsat complies with the relevant obligation, provided that in the event that Connect Bidco no longer has Overall Control of Inmarsat, Connect Bidco undertakes instead to exercise its rights relating to Inmarsat (including by voting its shares) to seek to procure that Inmarsat complies with the relevant obligation, and
- in respect of any obligation on an Inmarsat Group company, Inmarsat undertakes to procure that such company complies with the relevant obligation:

Maintenance of strategic capabilities

- 2.1. The relevant members of the Inmarsat Group shall comply with their respective contractual obligations under the Distribution Agreements in force as at the Effective Date insofar as such contractual obligations have a material impact on the delivery of

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367514/Security_Requirements_for_List_X_Contractors.pdf

the Specified Services to the Ministry of Defence and the relevant agreement remains in force.

- 2.2. In the event that there is a material change to Inmarsat's ability to continue to supply the Specified Services to the Ministry of Defence or to comply with the associated Security Aspects Arrangements, Inmarsat will notify the Ministry of Defence and provide:
 - 2.2.1. Detail of the material change;
 - 2.2.2. An assessment of the implications of the material change on Inmarsat's ability to continue to supply the Specified Services to the Ministry of Defence or to comply with the associated Security Aspects Arrangements;
 - 2.2.3. The detail of arrangements to be implemented to mitigate against any material adverse effects to the Ministry of Defence of such material change.
- 2.3. The relevant members of the Inmarsat Group will continue to offer to supply each of the Specified Services to the Ministry of Defence directly or through a third party distribution partner that has been approved by the Ministry of Defence, for so long as such service is operational, and the Ministry of Defence wishes to be a Customer, subject to the Ministry of Defence acting reasonably in negotiating, and offering to place, contracts.
- 2.4. Provided that the Ministry of Defence continues to be a Customer, Inmarsat will refrain from issuing Notice withdrawing any Specified Service for the period of three years from the Effective Date.
- 2.5. Provided that the Ministry of Defence continues to be a Customer, directly or indirectly, the Inmarsat Group will contract to supply the Specified Services to the Ministry of Defence through a contractual counterparty or counterparties incorporated under the laws of England and Wales and registered at Companies House, where the Ministry of Defence so requires.

Protection and Exploitation of Information

- 2.6. Inmarsat will comply with, and maintain certification pursuant to, the Security Requirements for List X Contractors in respect of areas where Sensitive Material warranting Security Requirements for List X Contractors is used or stored and will continue to operate a consolidated set of security controls which are accredited under ISO 27001 and the Cyber Essentials scheme as modified or replaced from time to time.
- 2.7. The relevant members of the Inmarsat Group will comply with the applicable Security Aspects Arrangements agreed in respect of areas and matters relating to Sensitive Material provided to Inmarsat Group by the Ministry of Defence in relation to the Specified Services or other services provided by Inmarsat or its UK Subsidiaries as Government Contractors.

- 2.8. For so long as Inmarsat Global Limited or any of its UK subsidiaries (the “**UK Group**”) holds or has access to Sensitive Material:
- 2.8.1. Such Sensitive Material will be handled by the applicable UK Group companies in accordance with the relevant Security Aspects Arrangements, and transfers or disclosures of Sensitive Material within the Inmarsat Group or to Connect Bidco, any Consortium Member or any third party will not be made other than in accordance with the provisions of the relevant agreement or otherwise with the written approval of the Ministry of Defence.
 - 2.8.2. Only personnel with the relevant clearance will have access to a List X Area, unless the Ministry of Defence has granted prior written approval for the relevant individual.
 - 2.8.3. The relevant UK Group companies will comply with the Cabinet Office guidance “*Industrial Security – Departmental Responsibilities Version 10.1 May 2018*” as amended or replaced from time to time, in respect to the handling of Sensitive Material provided to such Inmarsat Group companies in connection with the Specified Services.
- 2.9. For so long as Inmarsat Global Limited or any of its UK subsidiaries is contracted in the supply chain for the provision of Specified Services to the Ministry of Defence and is a List X Contractor:
- i. at least 50% of the Directors on the Board of Inmarsat Global Limited will be British nationals and resident in the UK, except insofar as the Ministry of Defence has separately agreed in writing;
 - ii. if and when appointed, the Chairman of the Board of Inmarsat Global Limited will be a British national;
 - iii. a sub-committee of the Board of Inmarsat Global Limited or any relevant UK operating subsidiary, comprised of a sufficient number of directors who are UK security cleared British nationals, will be authorised to make decisions on issues concerning Sensitive Material should the need arise;
 - iv. a Board Level Contact who is a British national and a member of the Board of Inmarsat Global Limited will be appointed to have overall responsibility for security in accordance with the Security Requirements for List X Contractors.
- 2.10. None of the Limited Partner Investors, or the Co-Investors, will have access to Inmarsat’s systems or be involved in the day-to-day operations of the Inmarsat business. Further, none of the Limited Partner Investors or the Co-Investors will have any information rights as regards Inmarsat, except to standard financial reporting information. For the avoidance of doubt, this obligation only applies to the extent any Limited Partner Investor or Co-Investor has not acquired any right to manage or otherwise control the decision-making of Inmarsat.

- 2.11. Insofar as any directors, officers or authorised representatives of Connect Bidco, other than those with appropriate UK security clearance, have access to Inmarsat's systems or are involved in day-to-day operations of the Inmarsat business, such access will be limited such that it will not extend to Sensitive Material.

Compliance

- 2.12. Inmarsat will employ a security controller responsible for facilitating and overseeing compliance with the Security Requirements for List X Contractors and the Security Undertakings and facilitate information requests from the Ministry of Defence made in accordance with clause 2.18. Such security controller shall be a British national with security clearance.
- 2.13. If Inmarsat or Connect Bidco are unable to comply with any of the Security Undertakings, or become aware of any material noncompliance, they will: notify the Ministry of Defence immediately; provide to the Ministry of Defence full reasons for the inability to comply or the non-compliance within two (2) months of becoming so aware; and use best endeavours to remedy any non-compliance as soon as possible.
- 2.14. The security controller will provide an annual compliance notice to the Ministry of Defence confirming that the Transaction Parties have undertaken and maintained all commitments within the Security Undertakings and providing further details and the outcome of any noncompliance notice issued in accordance with clause 2.13.
- 2.15. For the purposes of checking compliance with the Security Undertakings, authorised representatives of the Ministry of Defence shall be entitled to enter and inspect any premises insofar as they are used by Inmarsat to provide Specified Services to the Ministry of Defence and which handle or have access to Sensitive Material, and inspect any document or thing in such premises which is concerned with such Sensitive Material, whether the visit is announced or unannounced. Such representatives shall be entitled to access all such information as they may reasonably require and may remove from any premises any Sensitive Material that is being used or stored in breach of these Security Undertakings, it being understood that these rights are limited to information used by Inmarsat to provide Specified Services to the Ministry of Defence.
- 2.16. Inmarsat and Connect Bidco will take or refrain from taking such action as is reasonably necessary, in order to enable Inmarsat to comply with the Security Undertakings.

Provision of Information

- 2.17. Inmarsat and Connect Bidco will co-operate with the CMA and provide it with such information as it may reasonably require for the purpose of any of its functions under section 92 of the Act in relation to the Security Undertakings.
- 2.18. Inmarsat and Connect Bidco will provide the Ministry of Defence with such information as it may from time to time reasonably require to ascertain that they are fulfilling the Security Undertakings.

Directions from the CMA

2.19. Inmarsat and Connect Bidco will comply with such written directions as the CMA may from time to time give to take such steps within their competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Security Undertakings. Inmarsat or Connect Bidco will do or refrain from doing anything so specified or described in such written directions which they might be required by these Security Undertakings to refrain from doing or to do.

3. IMPLEMENTATION OF UNDERTAKINGS

3.1. Inmarsat and Connect Bidco will implement the Security Undertakings as soon as possible and in any event within five (5) working days of completion of the Transaction.

4. TERM OF UNDERTAKINGS

4.1. These Undertakings shall take effect upon the Effective Date and shall continue in force until they are released by the Secretary of State or the Specified Services have ceased to be provided. These Undertakings will cease to apply to Connect Bidco upon Exit.

5. GOVERNING LAW

5.1. These Undertakings shall be governed by and construed in accordance with the laws of England and each party hereby irrevocably submits to the exclusive jurisdiction of the English courts.

Signed: _____

Date: _____

Name: _____

Role: _____

For and on behalf of Inmarsat Plc

Signed: _____

Date: _____

Name: _____

Role: _____

For and on behalf of Connect Bidco Ltd