

ANNEX 1

s.30(b)(i) Free and frank provision of advice; s30(b)(ii) Free and frank of exchange of views;

Exemptions under sections 30(b)(i) and 30(b)(ii) of FOISA (free and frank advice and exchange of views) also apply to aspects of some of the information requested. These exemptions apply because disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice and exchange of views for the purposes of deliberation. The exemptions recognise the need for Ministers to have a private space within which to seek advice and views from officials before reaching the settled public position. Disclosing the content of free and frank briefing material on these matters will substantially inhibit such briefings in the future, particularly as such matters were still ongoing at the time and final decisions had yet to be taken or positions agreed.

These exemptions are subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemptions. We have found that, on balance, the public interest lies in favour of upholding the exemptions. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in allowing a private space within which officials can provide free and frank advice and views to Ministers in briefings and submissions or in relation to investment propositions. It is clearly in the public interest that Ministers can properly make decisions, potentially provide sound information to Parliament (to which they are accountable) and to understand fully the investments being made. They need full and candid advice from officials to enable them to do so. Disclosure of this type of information could lead to a reduction in the comprehensiveness and frankness of such advice and views in the future, which would not be in the public interest.

s.33(1)(b) Commercial interests;

Section 33(1)(b) applies when disclosure of the information would, or would be likely to, prejudice substantially the commercial interests of any person. A limited amount of the information you have requested is sensitive commercial information about draft business plans and operating models of all of the above companies noted.

As the exemption is also subject to the 'public interest test'. This means we have, in all the circumstances of this case, considered if the public interest in disclosing the information outweighs the exemptions. We have found that, on balance, the public interest lies in favour of upholding the exemptions. While we recognise that there is a general public interest in how public money is spent, there is a greater public interest in protecting the integrity of commercial business plans and operating models, ensuring no competitive disadvantage, loss of intellectual property or detriment to future negotiations or business relationships.

s.38 (1)(b) While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because an exemption under section 38(1)(b) (personal information) of FOISA applies to a small amount of that information, being the personal data of a third party, i.e. the names of junior officials and personal details of other persons. Disclosing such would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.