

SCHEDULE

Modification direction under section 106(3) of the Communications Act 2003 applying the electronic communications code

Background

1. The Applicant has applied to Ofcom for a modification to the direction dated 20 February 2018 applying the Code to the Applicant.
2. The date on which Ofcom received a completed application that meets the statutory requirements with respect to the content of an application for a direction applying the Code and the manner in which such an application is to be made was 7 November 2018.
3. By virtue of regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011 No. 1210), except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application.
4. Prior to giving a decision under section 106(3) of the Act to modify the terms on which, by virtue of section 106(5), the Code is applied to the Applicant, Ofcom must publish a notification of its proposal to give the direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification.
5. On 22 March 2019, Ofcom published, in accordance with section 107(6) of the Act, a notification of its proposal to give a direction to modify the terms on which the Code applies to the Applicant for the reasons set out in the consultation document accompanying that notification. That notification invited representations to Ofcom by no later than 5pm on 22 April 2019.
6. Ofcom did not receive any representations about the proposal. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom has had regard, in particular, to each of the matters set out in section 107(4) of the Act. Furthermore, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act. In accordance with section 115(4A) of the Act, Ofcom considers the modification is objectively justifiable and proportionate in what it is intended to achieve.

Decision

7. Ofcom hereby directs, in accordance with section 106 of the Act, that the terms on which the Code applies to the Applicant by virtue of section 106(5) under its existing direction from Ofcom dated 20 February 2018, shall be modified so that —
 - (a) the condition specifying that the Code powers do not extend to the installation of any infrastructure on or over public highways shall be removed; and therefore
 - (b) the Code shall apply to the Applicant without such restriction concerning public highways for the purposes of the provision by the applicant of an electronic Communications network; and
 - (c) the application of the Code shall continue to have effect throughout the United Kingdom.

8. This Direction shall take effect on the day it is published.

Interpretation

9. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means IX Wireless Limited, whose registered company number is 11009144;
- (c) “**Code**” means the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (as amended);
- (d) “**Ofcom**” means the Office of Communications.

10. For the purpose of interpreting this Direction—

- (a) headings and titles shall be disregarded;
- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

Signed



Brian Potterill

Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

26 April 2019