

Direction under Section 106(3) of the Communications Act 2003 applying the electronic communications code in the case of Wight Cable 2005 Ltd

[A Notification of this proposal was published on 9 February 2006]

Whereas:

- (A) On 24 January 2006, Wight Cable 2005 Ltd (registered company number 5470659) made an application for the electronic communications code (the "Code") for the purposes of the provision of an electronic communications network in the United Kingdom in accordance with section 107(1) of the Communications Act 2003 (the "Act") and the notification published by the Director General of Telecommunications under section 107(2) of the Act on 10 October 2003 setting out the requirements with respect to the content of an application for the electronic communications code and the manner in which such an application should be made;
- (B) On 9 February 2006, Ofcom published a notification of their proposal to give a direction applying the Code to Wight Cable 2005 Ltd in accordance with section 107 of the Act;
- (C) Ofcom did not receive any representations in relation to the proposed Direction;
- (D) For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that they have acted in accordance with their relevant duties set out in sections 3, 4 and 107(4) of the Act

NOW, therefore, pursuant to section 106(3) of the Act, Ofcom make the following Direction-

1. The electronic communications code shall apply to Wight Cable 2005 Ltd for the purposes of the provision by Wight Cable 2005 Ltd of an electronic communications network to have effect in the United Kingdom.

Definitions and Interpretation

2. In this Direction, except in so far as the context otherwise requires, words and phrases shall have the same meaning as in the Act, headings and titles shall be disregarded and expressions cognate with those referred to in this Direction shall be construed accordingly.
3. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
4. This Direction shall take effect on the day it is published.

Stephen Unger
Director of Telecoms Technology, Competition Group

A person authorised by Ofcom under paragraph 18 of the Schedule to

the Office of Communications Act 2002

23 March 2006

Explanatory Statement

1.1 On 24 January 2006, Wight Cable 2005 Ltd (“Wight Cable”) applied to Ofcom for a direction applying the electronic communications code (the “Code”). This application was made in accordance with section 107(1) of the Communications Act 2003 (the “Act”) and meets the requirements for any such application for a Direction applying the Code, and the manner in which such an application has to be made, as set out in the Notification published by the Director General of Telecommunications on 10 October 2003 under section 107(2) of the Act.

1.2 On 9 February 2006, Ofcom published a notification of its proposal to give a direction applying the Code to Wight Cable in accordance with section 107 of the Act. Representations on the proposal were invited by 13 March 2006. None were forthcoming.

1.3 In considering Wight Cable’s application, Ofcom has acted in accordance with its relevant duties set out in sections 3 and 4 of the Act. In particular, Ofcom has considered its duty in section 3(1)(b) “to further the interests of consumers in relevant markets, where appropriate by promoting competition” and the first Community requirement set out in section 4(3)(a) to promote competition “in relation to the provision of electronic communications networks and services”. In this case, Wight Cable intends to install an electronic communications network which will deliver basic telephony, data, television and radio services.

1.4 Wight Cable Ltd’s assets were transferred to Wight Cable, which was a new company formed specifically to develop and operate communications services on the Isle of Wight and elsewhere, on 16 December 2005. Wight Cable intends to install additional network infrastructure to extend the reach of its current network and it considers that Code powers are needed to manage this effectively. Wight Cable also requires Code powers to maintain its present network.

1.5 Ofcom has considered the application with regard to its duties set out in section 107(4) of the Act. Its views on the matters set out therein in relation to Wight Cable’s application are set out below.

The benefit to the public of the electronic communications network by reference to which the Code is to be applied to the applicant

1.6 Wight Cable offers various electronic communications services including basic telephony, data based services and television. The present network passes approximately 13,000 homes and the company plans to extend this network significantly. The expansion of its network will increase competition in the provision of a range electronic communications services and, therefore, consumers’ choice.

The practicability of the provision of the network without the Code

1.7 Wight Cable’s plans include extensive network build the majority of which will be provided via a broadband radio solution. Other elements will require the installation of additional ducting. In both cases, however, Wight Cable stated that its ability to deploy the infrastructure would be hampered by planning restrictions that would

otherwise apply under the New Road and Street Works Act 1991 and Town and Country planning legislation¹.

1.8 Ofcom considers that Wight Cable would be able to deploy additional infrastructure and maintain it thereafter more simply and quickly if it benefited from Code powers. Moreover, it would be placed at a competitive disadvantage if it did not benefit from such powers. Ofcom considers, therefore, that Wight Cable should be granted such powers.

The need to encourage the sharing of the use of electronic communications apparatus

1.9 Wight Cable explained that wherever possible it would be willing to share ducting to minimise disruption to public highways and this would be a continuation of current practices. The company also explained that it has – pre-the asset transfer – had regard to other undertakers' rights – that is, those benefiting from the ability to install or maintain infrastructure – in relation to network build and/or maintenance and will continue to coordinate such works wherever possible.

Whether the Applicant will be able to meet liabilities as a consequence of:

(i) the application of the Code; and

(ii) any conduct in relation to the application of the Code

1.10 Wight Cable has confirmed that it would put cover in place to safeguard appropriate authorities should a relevant event occur.

¹ See Part 24 of the Town and Country Planning, England and Wales (General Permitted Development) Order 1995. SI 1995/418 as amended. Planning (General Development) (Amendment) Order (Northern Ireland) 2003 SR No. 98. Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2001 SSI 2001/266.