

Section 1

Notification under Section 107(6) of the Communications Acts 2003

Proposal to give a direction applying the Electronic Communications Code to Cityspace

1. The Office of Communications (“Ofcom”) propose to give a direction under section 106(3) of the Communications Act 2003 (the “Act”) applying the Electronic Communications Code to Cityspace
2. The draft Direction and accompanying explanatory statement setting out Ofcom’s reasons for the proposal are available at www.ofcom.org.uk. Hard copies of the draft Direction and the explanatory statement will be made available on request. For hard copies, please contact Michael Galvin on 020 7783 4158 or by sending an email to Michael.galvin@ofcom.org.uk.
3. Representations on the proposal may be made to: Michael Galvin, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA by not later than **5pm on 13 September 2004**.
4. All confidential information should be clearly marked as such and separated out into a confidential annex. All representations received will be published, unless it is clearly marked that the response is confidential, and made available in Ofcom’s Knowledge Centre. Please contact Jan Kacperek (jan.kacperek@ofcom.org.uk) for further information with respect to public inspection or, for responses to the draft Direction, visit Ofcom’s website (www.ofcom.org.uk).
5. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.
6. In this Notification, “Cityspace” means Cityspace Limited (registered company number 03169833).

Sean Williams
Partner, Competition and Markets
5 August 2004

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

[Draft] Direction under Section 106(3) of the Communications Act 2003 applying the electronic communications code in the case of Cityspace Limited

[A Notification of this proposal was published on 13 September 2004]

Whereas:

- A. On 4 May 2004 Cityspace made an application for the electronic communications code (the “Code”) for the purposes of the provision of an electronic communications network in accordance with section 107(1) of the Act and the notification published by Ofcom under section 107(2) of the Act on 10 October 2003 setting out their requirements with respect to the content of an application for the electronic communications code and the manner in which such an application is to be made;
- B. On 13 August 2004 Ofcom published a notification of their proposal to give a direction applying the Code to Cityspace in accordance with section 107 of the Act;
- C. Ofcom have consider every representation made to them about 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 Cityspace for the purposes of the provision by Cityspace of an electronic communications network to have effect in relation to the United Kingdom.

Definitions and Interpretation

- 2. In this Direction, unless the contrary intention appears-
 - “Act” means the Communications Act 2003; and
 - “Cityspace” means Cityspace Limited (registered company number 03169833)
- 3. 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.
- 4. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
- 5. This Direction shall take effect on the day it is published.

Sean Williams
Partner, Competition and Markets

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

[Date]

Explanatory Statement

- 1.1 On 4 May 2004 Cityspace Limited (“Cityspace”) applied for the electronic communications code (the “Code”) for the purposes of the provision of an electronic communications network by it. This application was made in accordance with section 107(1) of the Communications Act 2003 (the “Act”). In addition, Cityspace’s application met the requirements for any such application for a direction applying the Code and the manner in which such an application is to be made, as set out in the Notification published by Ofcom on 10 October 2003 under section 107(2) of the Act.
- 1.2 In considering Cityspace’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”. The direction applying the code helps to promote competition by assisting Cityspace in its endeavours to build infrastructure which will increase competition in the provision of electronic communications networks and services. In considering Cityspace’s application, Ofcom has also had regard to its duties set out in section 107(4) of the Act, as set out below.

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

- 1.3 Cityspace proposes to install a wireless local access network (WLAN) or ‘Wi-Fi’ network which would allow users to access the Internet and send emails at specific locations without needing to plug into a network (i.e. they could access services in transit). Cityspace’s network potentially will allow wider network coverage than current so-called “hotspots” which are generally located in areas such as airports and railway stations. In its application, Cityspace explained that it has already established links with some local authorities in order to provide wider broadband coverage in certain areas which might not otherwise have had access to broadband technology.
- 1.4 Cityspace also believes that the wider coverage of its networks in comparison to hotspots would be attractive to businesses with employees who are regularly in transit and thus installation of its network might encourage inward investment in areas in which the network was located.
- 1.5 Ofcom is of the view that Cityspace’s Wi-Fi network could potentially benefit the public and that wireless access services could increase broadband penetration.

The practicability of the provision of the network without the Code

- 1.6 Cityspace already provides its Wi-Fi network in some areas in agreement with some local authorities. However, Cityspace has found that any such application typically takes 12 months to process before Cityspace can install apparatus needed to house its Wi-Fi network. Ofcom is therefore of the view that a lack of Code powers is likely to delay installation of Cityspace’s Wi-Fi infrastructure and given the potential benefits of it, this would not be in the interests of consumers.

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

- 1.7 In its application, Cityspace has explained that it already has an agreement with a major mobile operator whereby the operator provides some of Cityspace's costs in return for Cityspace allowing the operator concerned to store its apparatus within Cityspace's infrastructure. Furthermore, it explained that it might be able to extend such agreements should it be able to install its infrastructure in shorter timescales.
- 1.8 In addition, Cityspace has shown that it is willing to ensure that the location and design of its infrastructure fit in with the local environment. It has also established service level agreements under which it will maintain its infrastructure. Although these agreements might well have been fundamental in Cityspace's applications for planning permission, they show a willingness and commitment to maintenance of sites.

Whether Cityspace 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
- 1.9 Cityspace has confirmed that it would ensure that it had sufficient funds for liabilities in place should it be granted Code powers and that it would submit the necessary certificate and instrument to Ofcom two weeks before it would choose to exercise its rights for the first time, which accords with the requirements of Regulation 16 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003. Cityspace's letter confirming that this would be the case was executed for and on behalf of its board of directors.

How to respond

- 1.10 Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 13 September 2004**.
- 1.11 Ofcom prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.
- 1.12 Please can you send your response to [Michael.galvin @ofcom.org.uk](mailto:Michael.galvin@ofcom.org.uk).
- 1.13 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Michael Galvin
Competition and Market
4th Floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7783 4109

Confidentiality

- 1.14 Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).
- 1.15 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.
- 1.16 Ofcom reserves its power to disclose certain confidential information where this is necessary to fulfil its functions, although in practice it would do so only in limited circumstances.
- 1.17 Please also note that copyright and all other intellectual property in responses will be assumed to be assigned to Ofcom unless specifically retained.

Next steps

- 1.18 Following the end of the consultation period, depending on responses to the consultation, Ofcom intends to publish the final direction and explanatory statement applying the Code to Cityspace.

Ofcom's consultation processes

- 1.19 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.
- 1.20 This consultation is shorter than Ofcom's standard 10 week period because - for guidance on valid reasons see Ofcom's published consultation guidelines, available at http://www.ofcom.org.uk/consultations/consult_method/consult_guide.pdf.
- 1.21 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.
- 1.22 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7981 3585
Fax: 020 7981 3333
E-mail: philip.rutnam@ofcom.org.uk

Annex 1

Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

1. Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

2. We will be clear about who we are consulting, why, on what questions and for how long.
3. We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
4. We will normally allow ten weeks for responses to consultations on issues of general interest.
5. There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
6. If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

7. We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 2

Consultation response cover sheet

- A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, unless we are asked not to.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to confirm on the response cover sheet that Ofcom can publish their responses upon receipt.
- A2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Main Heading

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

