

**Direction under Section 106(3) of the Communications Act 2003 applying the electronic communications code in the case of Thales Transport and Security Limited**

**A Notification of this proposal was published on 9 April 2009**

Whereas:

- (A) On 19 February 2009, Thales Transport and Security Limited (registered company number 03132438) 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 Act and the notification published by Ofcom by virtue of the Transitional Provisions 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 9 April 2009, Ofcom published a notification of their proposal to give a direction applying the Code to Thales Transport and Security Limited in accordance with section 107 of the Act;
- (C) Ofcom did not receive any representations in relation its proposal to give a Direction in this case;
- (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 Thales Transport and Security Limited for the purposes of the provision by Thales Transport and Security Limited of an electronic communications network to have effect in the UK.

Definitions and Interpretation

2. In this Direction, unless the contrary intention appears-

"Act" means the Communications Act 2003;

"Ofcom" means the Office of Communications; and

"Transitional Provisions" means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.

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.

**Steve Unger**  
**Competition Policy Director**

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

**26 May 2009**

# Explanatory Statement

1.1 On 19 February 2009, Thales Transport and Security Limited applied for the electronic communications code (the “Code”) for the purposes of the provision by it of an electronic communications network. 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 Ofcom (by virtue of the Transitional Provisions in the Act) on 10 October 2003 under section 107(2) of the Act.

1.2 On 9 April 2009, Ofcom published a notification and draft Direction in which it proposed to give Code powers Thales Transport and Security Limited. Ofcom did not receive any representations in relation to its proposal and therefore has published a Direction giving Code powers in this case.

1.3 In considering Thales Transport and Security Limited’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”.

1.4 Thales Transport and Security Limited proposes to build a next generation broadband network which will support high speed broadband services in parts of South Yorkshire which will benefit local authorities, businesses and the wider community. The network is being constructed and operated on behalf of four regional councils (Sheffield City Council, Rotherham Borough Council, Barnsley Metropolitan Borough Council and Doncaster Borough Council) and they are partly funding construction of the network.

1.5 In addition to the requirements of sections 3 and 4 of the Act, Ofcom has also had regard to its duties set out in section 107(4) of the Act. These 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 As explained in paragraph 1.4, the network will support high speed broadband services in the South Yorkshire region by utilising VDSL technology. The application explains that the local authorities involved will be likely to use the network to link their various premises (offices, schools, libraries, etc). The network will also be made available to service providers on a wholesale basis so that they can provide high speed communications services to business and residential customers.

1.7 Ofcom considers that the network is likely to support the local community by enabling the provision of high speed broadband services to the South Yorkshire region and is likely to have social and economic benefits. Ofcom therefore considers that the network will benefit the public.

## **The practicability of the provision of the network without the Code**

1.8 The Code enables, amongst other things, operators to construct their networks and, in particular, states that they “shall, for the statutory purposes, have the right

to....(a) install electronic communications apparatus, or keep electronic communications apparatus installed, under, over, [in, on] along or across...a street.” The Code is therefore a means by which these networks could be deployed quickly.

1.9 Thales Transport and Security Limited's application explains that new ducting and street cabinets will need to be installed and it will therefore need access to the public highway. It considers that it would be impossible to provide next generation broadband infrastructure in the absence of Code powers.

1.10 Ofcom considers that it should grant Code powers to Thales Transport and Security Limited and that, in doing so, Thales Transport and Security Limited would be better placed to deploy and maintain its broadband network. Ofcom considers that it would be difficult to rollout such a network absent Code powers.

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

1.11 As explained in paragraph 1.6, the local authorities involved are likely to utilise the network for their own purposes. Network capacity will, however, also be made available to service providers on a wholesale basis and this will enable them to provide high speed broadband retail services to business and residential customers in areas in which in the absence of wholesale capacity they might not choose to provide services. The network will therefore serve to substitute for direct provision of other infrastructure.

1.12 The potential for duct sharing, however, could be limited because the newly built parts of the network will be linked together using other communications providers' networks. The end-to-end network will not be owned entirely by the applicant and therefore it cannot guarantee access to ducting owned by other providers.

### **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**

1.13 Thales Transport and Security Limited is aware of the requirements of the Electronic Communications (Conditions and Restrictions) Regulations 2003 ('the Regulations') which require Code operators to ensure sufficient funds are available to meet any liabilities should they arise. They have provided details of their ability to put in place a sum of money to meet any such liabilities.

1.14 Thales Transport and Security Limited explained that it has extensive experience of organising and managing construction activities on public land and gave examples where it has previously demonstrated that it is a conscientious contractor.

1.15 Ofcom is satisfied that Thales Transport and Security Limited would use the Code responsibly and be able to put in place securities to meet its obligations under the Regulations specifically those relating to potential liabilities.