

SCHEDULE

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 direction 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 1 May 2019.
- 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 apply the Code 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 14 June 2019, Ofcom published, in accordance with section 107(6) of the Act, a notification of its proposal to give a direction applying the Code 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 15 July 2019.
- 6.** Ofcom received two representations concerning the proposal. The respondents did not object to the proposal, but sought further information about whether the Applicant would offer wholesale access to its electronic communications network and duct infrastructure, including: whether such services would be made available when housing developments are initially constructed, or later; and how the Applicant would notify interested parties of such developments.
- 7.** Ofcom requested additional information from the Applicant concerning the representations. In response to Ofcom's request, the Applicant stated that it intends to focus on the rollout of its retail electronic communications services initially. At a later date, it plans to introduce wholesale access to its electronic communications network to enable other telecoms providers to offer retail broadband services. The Applicant stated that it would consider requests for wholesale access to its duct infrastructure once its housing developments are completed and the roads and footpaths have been adopted by local authorities. The Applicant would also consider requests for access during the construction phase based on the merits of the requests and the practicalities of the build process. The Applicant stated that it will consider how best to notify interested parties of forthcoming property developments when it develops its wholesale offering.
- 8.** 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.

Decision

9. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—

- (a) the Code shall apply to the Applicant for the purposes of the provision by the Applicant of an electronic communications network.
- (b) that application of the Code shall have effect throughout the United Kingdom.

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

Interpretation

11. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means Persimmon Homes Limited, whose registered company number is 04108747;
- (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) “**Ofcom**” means the Office of Communications.

12. 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

25 July 2019