

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

Proposal to give a direction applying the Electronic Communications Code to Crown Castle UK Ltd

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 (the “Code”) to Crown Castle UK Ltd (registered company number 3196207).
2. The draft Direction and accompanying explanatory statement setting out Ofcom’s reasons for the proposal are available at <http://www.ofcom.org.uk/consult/condocs/crown/>. 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 **24 June 2005**.
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.

Stephen Unger
Director of Telecoms Technology, Competition and Markets

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

26 May 2005

**[Draft] Direction under Section 106(3) of the Communications Act 2003
applying the electronic communications code in the case of Crown Castle UK
Ltd**

[A Notification of this proposal was published on 26 May 2005]

Whereas:

- (A) On 10 May 2005, Crown Castle UK Ltd (registered company number 3196207) 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 Office of Communications ('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 26 May 2005, Ofcom published a notification of their proposal to give a direction applying the Code to Crown Castle UK Ltd 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 Crown Castle UK Ltd for the purposes of the provision by Crown Castle UK Ltd of an electronic communications network to have effect in the United Kingdom.

Definitions and Interpretation

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

"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.

Stephen Unger
Director of Telecoms Technology, 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 10 May 2005, Crown Castle UK Ltd (“Crown Castle”) 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 In considering Crown Castle’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, amongst other things, Crown Castle provides BBC transmission network services and provides apparatus used to support the five mobile network operators’ networks.

1.3 Prior to the implementation of the Act, Crown Castle could not benefit from the powers conferred upon Code operators as it does not run a telecommunications network. It is for this reason that Crown Castle has not had or benefited from Code powers. However, as a result of convergence, the distinction between networks has become increasingly blurred. This was recognised in drawing up the Act and there is therefore a broader interpretation of those that can and should be permitted to benefit from Code powers.

1.4 The proposed direction would help to promote competition, as Crown Castle provides apparatus used to support the five mobile network operators’ networks and is therefore important in terms of ensuring that the operators can all offer widespread coverage. The transmission network, meanwhile, helps to promote competition in television markets.

1.5 Although Crown Castle has been able to maintain its network without Code powers, Ofcom considers that a large network that helps to underpin competition in communications markets needs to benefit from Code powers much as any other network needs to benefit from Code powers. Crown has explained that it does not own the freehold interest of all of its networks sites and could therefore be asked to vacate a site without recourse to the powers that would be conferred upon it under the Code. This is not a satisfactory position to maintain.

1.6 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

1.7 As explained in paragraph 1.2, the network concerned has two major functions. These are to run the BBC’s transmission network services and to support the mobile network operators’ networks. In order to support these networks, Crown Castle’s estate comprises of over 3600 sites. Interruption to its broadcast transmission network services – for instance, if it had to vacate a site and had not found a suitable

alternative – would have a very real and immediate impact on the area that that tower served. The powers that Ofcom propose to confer upon Crown Castle would allow it to exercise preventative rights that Code operators have in such cases. At present, it does not benefit from these rights.

1.8 Also, in terms of the apparatus used to support the mobile networks, its network helps to ensure widespread coverage and, importantly, helps to prevent a proliferation of masts as its network is not used solely for one operator.

1.9 For these reasons, Ofcom considers that it is appropriate to grant Code powers to Crown Castle.

The practicability of the provision of the network without the Code

1.10 Code powers enable code operators to benefit from, amongst other things, the ability to install or maintain infrastructure sited beneath public highways without the need to apply for a specific licence to do so under the New Road and Street Works Act 1991 and benefit from certain exemptions under Town and Country Planning legislation¹. In this case, Crown Castle has been able to maintain its network without Code powers. However, that does not mean that it would not have benefited from the powers conferred upon Code powers. Indeed, far from it. Crown Castle believes that normal Town and Country Planning legislation does not provide it with adequate security in relation to leasehold sites which it needs to access and develop to ensure the stability and growth of its broadcast transmission network and its other sites.

1.11 Also, as explained in paragraph 1.2, Crown Castle was not permitted to benefit from Code powers prior to the Act. It is for this reason that it has not historically benefited from Code powers unlike other electronic communications networks.

1.12 The absence of Code powers would also place Crown Castle at a competitive disadvantage in the broadcast transmission network.

1.13 For these reasons, Ofcom considers that it should grant Code powers to Crown Castle.

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

1.14 In terms of its broadcast transmission facilities, Crown Castle has a reciprocal network sharing arrangement with ntl the other major transmission broadcast provider. The application also made it clear that Crown Castle believed that the absence of Code powers and the associated rights might have been a factor considered by mobile operators in deciding whether or not to site their antennae on masts owned by Crown Castle. Crown Castle believes that the lack of certainty in relation to tenure must be a relevant consideration. Nonetheless, Crown Castle still averages approximately 1.5 tenants per site across its entire portfolio and it is therefore clear to see that it wishes to encourage infrastructure sharing.

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.

1.15 More generally, Crown Castle has explained that it has developed a fast track site share process under which it will handle and turnaround enquires for site sharing and handing over a completed installation within 150 days.

1.16 For these reasons, Ofcom is satisfied that Crown Castle would be willing to – and already has a proven record of – sharing its electronic communications apparatus.

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

1.17 Crown Castle has confirmed that it would put sufficient funds in place should it be granted the Code. It explained that it already has in place insurance cover and other third party liabilities in place and therefore it believes that it would be able to put in place funds to cover any liabilities that might occur under Regulation 16. A letter to this effect was sent to Ofcom.

1.18 Crown Castle has access to a large portfolio of assets and Ofcom considers that it would be possible for Crown Castle to put in place funds to meet any potential liabilities.

How to respond

1.19 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on **24 June 2005**.

1.20 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.

1.21 Please can you send your response to michael.galvin@ofcom.org.uk.

1.22 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Michael Galvin
Competition and Markets
4th Floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7783 4158
Fax: 020 7783 4109

Confidentiality

1.23 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).

1.24 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.

1.25 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.

1.26 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

1.27 Unless there are any reasoned objections to Ofcom's proposals, it intends to grant Code powers to Crown Castle shortly after the end of the consultation period.

Ofcom's consultation processes

1.28 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.

1.29 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.

1.30 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.

1.31 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:

Tony Stoller
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7981 3550
Fax: 020 7981 3630
tony.stoller@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

2.1 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.

2.2 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.

2.3 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.

2.4 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.

2.5 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:

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

Name/contact details/
job title

Whole response

Organisation

Part of the response

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)?

Yes

No

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 all intellectual property rights in the response vest with Ofcom. If I have sent my response by email, Ofcom can disregard any standard email text about not disclosing email contents and attachments.

Ofcom can publish my response: on receipt once the consultation ends

Name

Signed (if hard copy)

