

**Direction under Section 106(3) of the Communications Act 2003 revoking a direction applying the electronic communications code in the case of National Transcommunications Limited and giving such a direction in the case of National Transcommunications Limited**

**A notification of this proposal was published on 13 January 2005**

Whereas:

- A. On 14 February 1996, the Secretary of State granted National Transcommunications Limited a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising National Transcommunications Limited to run a telecommunication system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to National Transcommunications Limited;
- B. By virtue of section 106 of the Act, which came into force on 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Act;
- C. By virtue of paragraph 17 of Schedule 18 to the Act, National Transcommunications Limited is treated after 25 July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act;
- D. On 29 November 2004, National Transcommunications Limited made an application for 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 its 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;
- E. The underlying purpose of the above-mentioned application was to extend the scope of the Code in respect of National Transcommunications Limited's terrestrial transmission network, which was not included immediately before the commencement of section 106 of the Act in the telecommunication system of National Transcommunications Limited for the purposes of the application of the Code, and which would not have been so included if it had been being provided at that time, in accordance with paragraph 17(3) of Schedule 18 to the Act. As a consequence, National Transcommunications Limited's terrestrial transmission network was not within the scope of the Deemed Direction;
- F. Ofcom considered that it would not be appropriate to in effect apply the Code twice in the case of the same provider of an electronic communications network, and therefore decided to treat National Transcommunications Limited's application as an application to revoke the Deemed Direction and to give a new direction applying the Code to National Transcommunications Limited;
- G. On 13 January 2005, Ofcom published a notification of its proposal to revoke the Deemed Direction and to give a direction applying the Code to National

Transcommunications Limited in accordance with section 107 and section 115 of the Act;

- H. Ofcom did not receive any representations relating to the proposed Direction as set out in the explanatory statement accompanying this Direction;
- I. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that they have acted in accordance with its 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 direction applying the electronic communications code to National Transcommunications Limited under section 106(3) of the Act by virtue of paragraph 17 of Schedule 18 to the Act shall be revoked.
2. The electronic communications code shall apply to National Transcommunications Limited for the purposes of the provision by National Transcommunications Limited of an electronic communications network to have effect in the United Kingdom.

Definitions and Interpretation

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

“Act” means the Communications Act 2003;

“National Transcommunications Limited” means National Transcommunications Limited (registered company number 02487597)

“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.

4. 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.

5. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

6. 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**

**10 March 2005**

# Explanatory Statement

1.1 On 14 February 1996, the Secretary of State granted National Transcommunications Limited (NatTrans) a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising NatTrans to run a telecommunication system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to NatTrans.

1.2 By virtue of section 106 of the Communications Act 2003 (the 'Act'), which came into force on 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Act.

1.3 By virtue of paragraph 17 of Schedule 18 to the Act, NatTrans is treated after 25 July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act.

1.4 On 29 November 2004, NatTrans applied for 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 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.

1.5 The underlying purpose of the above-mentioned application was to extend the scope of the Code in respect of NatTrans' terrestrial transmission network, which was not included immediately before the commencement of section 106 of the Act in NatTrans' telecommunication system for the purposes of the application of the Code, and which would not have been so included if it had been being provided at that time, in accordance with paragraph 17(3) of Schedule 18 to the Act. As a consequence, NatTrans' terrestrial transmission network was not within the scope of the Deemed Direction.

1.6 Ofcom considered that it would not be appropriate to in effect apply the Code twice in the case of the same provider of an electronic communications network. It therefore decided to treat NatTrans' application as an application to revoke the Deemed Direction and to give a new direction applying the Code to NatTrans and the effect of this new direction would also apply to NatTrans' terrestrial transmission network. This then avoids the situation under which NatTrans would, in effect, have been running the same network under two separate sets of code powers. Operators running electronic communications networks can, of course, choose to maintain more than one set of Code powers. However, in this case, NatTrans wished to extend its Code powers only.

1.7 On 13 January 2005, Ofcom published a notification of its proposal to revoke the Deemed Direction and to give a direction applying the Code to NatTrans in accordance with section 107 and section 115 of the Act. Ofcom asked for any comments on its proposal to be made by 14 February 2005. No responses were received.

1.8 In revoking the Deemed Direction and in granting a new direction applying the Code to NatTrans (the "Direction"), Ofcom has acted in accordance with its relevant

general 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 third Community requirement set out in section 4(5) to “promote the interests of all persons who are citizens of the European Union”. The new direction covers the electronic communications network provided by NatTrans, which fell within the scope of the Deemed Direction (i.e. which was in NatTrans’ telecommunication system provided under its licence granted under the 1984 Act, or which would have been included had it been provided before 25 July 2003), as well its broadcast network and related facilities.

1.9 The Direction will help to further the interests of consumers, as the network concerned is crucial to, and helps to underpin, national terrestrial television and radio services. NatTrans is one of the two main broadcast transmission providers. NatTrans also supports an array of network services used by public safety organisations. These will need to be substantially re-engineered as its systems are digitalised. In addition, NatTrans has developed a wireless connectivity service called “Citycell”. Citycell supports mobile networks in dense urban areas. Further the Direction covers the part of NatTrans’ electronic communications network which previously fell within the scope of the Deemed Direction,

1.10 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 the applicant**

1.11 As explained in paragraph 1.9, NatTrans supports a wide range of communications products and services and provides broadcast transmission. NatTrans is one of the two major broadcast transmission providers. Its network (and that of the other main broadcast transmission provider) is used to provide terrestrial transmission services to all of the public service broadcasters. As well as this, as explained, it plays an important role in assisting the emergency services. NatTrans maintains and installs the radio communications services for various ambulance, fire, and police services across the country. The network plays a significant role in services that have a major impact on the public. It is, therefore, important that NatTrans can maintain its network and carry out such works that are necessary to ensure its reliability

1.12 For these reasons, Ofcom believes that NatTrans needs to be able to maintain the network as appropriate to ensure continuity of service.

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

1.13 The network concerned comprises of approximately 1500 sites across the UK and a further 800 are shared under arrangements with other network providers. The majority of these sites are not freehold and in maintaining and securing access to these sites, therefore, NatTrans needs to use the powers that it would obtain as a result of a successful application for the Code on an ongoing basis. In its absence, NatTrans would need to organise arrangement for access to sites on a case-by-case basis. As a consequence, it would not be able to undertake such works as it needed to in prompt manner. This would not be desirable and nor would it be feasible to run and maintain the network on this basis.

1.14 Ofcom believes, therefore, that NatTrans will benefit from Code powers and that these powers will enable it to maintain its network as appropriate. This should help to ensure the reliability and resilience of the network. In the absence of Code powers, NatTrans would need to establish agreements with relevant authorities or landowners in advance of any work that it needed to undertake.

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

1.15 In its application, NatTrans states that it encourages shared use of its sites by a wide range of operators. Its sites are shared by, amongst others, mobile phone operators, the five main terrestrial channels, and commercial broadcast radio services. NatTrans has also stated that it supports the Government's aim to minimise the proliferation of new telecommunications sites<sup>1</sup>.

1.16 In addition, the ntl Group has additional corporate policies in these areas and has shown a commitment to ensuring that any works undertaken by it, including the removal and disposal of infrastructure, meet high standards. In its application, NatTrans made it clear that these would equally apply to it.

### **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 NatTrans has confirmed that relevant funds to meet any liabilities would be put in place and acknowledges that such funds need to be put in place at least two weeks prior to the commencement of any works undertaken (if granted) under Code powers. Its application states, however, that it would not expect that it would need to put in place a large sum, as most of its network is located on private sites.

1.18 For these reasons, and the fact that the ntl Group has ensured that sufficient funds have been secured for other purposes, Ofcom is satisfied that such funds will be made available.

---

<sup>1</sup> As set out in paragraphs 19-23 of planning policy guidance (PPG) note 8 and in Clauses 127-132 of the Code of Best Practice on Mobile Phone Network Development, both of which were published by the Office of the Deputy Prime Minister