

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 20 April 2020.
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 23 July 2020, 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 24 August 2020.
6. Ofcom received one representation objecting to the proposal. The respondent considered there was insufficient evidence to judge whether the Applicant would be able to use Code powers responsibly since it was incorporated recently and has only one director listed. Having considered the objection, it was Ofcom's view that the Applicant has provided it with information which demonstrates that it understands the obligations associated with the use of Code powers.
7. For the reasons set out in the explanatory statement accompanying Ofcom's consultation, 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

8. 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; and
 - (b) that application of the Code shall have effect throughout the United Kingdom.
9. This Direction shall take effect on the day it is published.

Interpretation

10. In this Direction—
 - (a) “**Act**” means the Communications Act 2003;
 - (b) “**Applicant**” means 5ibre Limited, whose registered company number is 12543727;

- (c) “Code” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) “Ofcom” means the Office of Communications.

11. 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

A handwritten signature in black ink, appearing to read 'Brian Potterill', is written over a vertical line.

Brian Potterill

Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

2 October 2020