

## SCHEDULE

### Direction under section 106(3) of the Communications Act 2003 applying the electronic communications code

#### Background

1. Open Infra Ltd, whose registered company number is 13470538, has applied to Ofcom for a direction applying the Code to it.
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 27 September 2021<sup>1</sup>.
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 Open Infra Ltd, 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 16 February 2022, Ofcom published a notification in accordance with section 107(6) of the Act of its proposal to give a direction applying the Code to Open Infra Ltd. That notification invited representations to Ofcom by no later than 5pm on 19 March 2022.
6. Ofcom received one representation objecting to the proposal. The respondent considered that as Open Infra Ltd is a recently incorporated company, there is insufficient evidence to judge its financial status and that there is no guarantee that any liabilities will be met.
7. Ofcom considers applications by providers of electronic communications networks and/or systems of infrastructure, taking account of its statutory duties under sections 3, 4 and 107(4) of the Communications Act 2003. Our assessment includes consideration of whether applicants understand their obligations with regards to funds for liabilities. In this case, it was Ofcom's view that Open Infra Ltd has demonstrated that it understands its obligation to provide funds for liabilities. In particular, it has provided Ofcom with information about the level of potential liabilities (including how it calculated this) and confirmation by a director of the company that it will ensure that sufficient funds for liabilities are in place when this becomes necessary.
8. 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 requirements in section 4 of the Act.

#### Decision

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<sup>1</sup> The Consultation included the date 7<sup>th</sup> September 2021 however our records indicate that additional relevant documentation was received on 27 September 2021.

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

- (a) the Code shall apply to Open Infra Ltd (whose registered company number is 13470538) for the purposes of the provision by it of an electronic communications network; and
- (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) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (c) “**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**

**Director of Mobile Network Strategy**

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

27 April 2022.