

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

Proposal to revoke a direction applying the Electronic Communications Code to National Transcommunications Limited and to give such a direction to National Transcommunications Limited

1. By virtue of paragraph 17 of Schedule 18 to the Communications Act 2003 (the 'Act') National Transcommunications Limited is treated after 25th July 2003 as a person in whose case the Electronic Communications Code (the 'Code') applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act.
2. In accordance with section 115 of the Communications Act 2003 (the 'Act'), the Office of Communications ("OFCOM") propose to revoke the Deemed Direction, and to make a further direction applying the Code to National Transcommunications Limited, by way of a further direction under section 106 of the Act (the 'Draft Direction'). This follows an application for an extension of its code powers by National Transcommunications Limited to its terrestrial transmission network. Ofcom is proposing to treat such application as an application for revocation and re-granting of the Code in respect of National Transcommunications Limited.
3. The draft Direction and accompanying explanatory statement setting out Ofcom's reasons for the proposal are available at <http://www.ofcom.org.uk/consultations/current/ntlb/>. 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.
4. 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 **14 February 2005**.
5. 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).
6. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.
7. In this Notification, "National Transcommunications Limited" means National Transcommunications Limited (registered company number 02487597).

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

13 January 2005

**[Draft] 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 25th 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 25th 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 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;
- 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 their 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 have considered every representation made to them about the proposed Direction;
- I. 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 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

[Date]

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 25th 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 25th 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, National Transcommunications Limited's 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, 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. This then avoids the situation whereby NatTrans would, in effect have two 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 their 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.

1.8 In revoking the Deemed Direction and in granting a new direction applying the Code to NatTrans, 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 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 25th July 2003), as well its broadcast network and related facilities.

1.9 The proposed direction would 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 As well as the requirements set out in section 3 and of the Act, 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 would benefit from Code powers and that the powers that it would gain would enable it to maintain its network as appropriate. This would 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 sites¹.

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. These commitments would equally apply to NatTrans.

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 would be made available.

How to respond

1.19 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on **14 February 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 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

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 Following the end of the consultation period, depending on responses to the consultation, Ofcom intends to publish the final direction and explanatory statement applying the Code to National Transcommunications Limited.

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 it is important that Code operators should be able to utilise these powers where appropriate as early as possible.

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:

Philip Rutnam
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7981 3585
Fax: 020 7981 3333
E-mail: philip.rutnam@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)

