



Proposal to apply Code Powers to Fibrowave Networks Limited

Statutory notification under section 107(6) of the
Communications Act 2003

Consultation

Publication date: 10 August 2012

Closing Date for Responses: 10 September 2012

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Section 1

Summary

Purpose of consultation

- 1.1 We are proposing to apply the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 as amended (the “**Code**”) on terms proposed in this consultation to Fibrowave Networks Limited, whose registered company number is 07817009 (the “**Applicant**”). Further background about the Code (including the procedure that applies in this context) is set out in Section 2 of this document.
- 1.2 Our reasons for that proposal are set out in Section 3 of this document and our draft direction applying the Code to the Applicant is set out in Annex 1 to this document.
- 1.3 The closing date for responses is 10 September 2012 and stakeholders wishing to respond are directed to Annex 1 for information on how to respond to this consultation.

Proposed application and terms

- 1.4 The only purposes for which the Code may be applied in a person’s case are:
 - 1.4.1 the purposes of the provision of an electronic communications network; or
 - 1.4.2 the purposes of the provision of a system of conduits which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.
- 1.5 We are proposing to apply the Code for the Applicant’s electronic communications network throughout the UK. According to the Applicant’s application, the Applicant aims to bring superfast broadband to rural areas. The Applicant plans to deploy a number of technological solutions over a phased process, ranging from point to point microwave links, installation of cabinets and fibre optic cabling, Fibre to the Home (FTTH) as well as having access to the BT network via their Physical Infrastructure Access (PIA) offering, with a focus on East Anglia and the East Midlands.
- 1.6 The Applicant intends to operate as an Internet Service Provider and ultimately as a Wholesale Connectivity Provider providing broadband services offering connectivity over the last mile to other ISP’s.
- 1.7 We consider that this proposal is appropriate having regard to the matters set out in section 107(4) of the Communications Act 2003. We consider that the performance of our statutory duties in sections 3 and 4 of that Act would be secured and furthered in relation to this proposal.
- 1.8 We will consider any responses we may receive by the closing date before making our decision as whether we should give a direction applying the Code to the Applicant.

Section 2

Background

The Code

- 2.1 The Code is designed to facilitate the installation and maintenance of electronic communications networks.¹ It confers rights on providers of such networks and on providers of systems of conduits which are made available for use by providers of electronic communications networks for the purposes of the provision of those networks, to install and maintain apparatus in, over and under land and results in considerably simplified planning procedures. The Electronic Communications and Wireless Telegraphy Regulations 2011 (the “2011 Regulations”),² which came into force on 26 May 2011, included amendments to the Act for the purpose of implementing Directives 2009/136/EC³ and 2009/140/EC.⁴
- 2.2 Other legislation may from time to time set out restrictions and conditions subject to which the Code applies.⁵

The application of the Code

- 2.3 The Code only has effect in the case of a person to whom it is applied by a direction given by Ofcom (or, in the case of the Secretary of State or any Northern Ireland department, where the Secretary of State or that department is providing or proposing to provide an electronic communications network).⁶
- 2.4 The only purposes for which the Code may be applied in a person’s case by a direction are:
- 2.4.1 the purposes of the provision of an electronic communications network; or
 - 2.4.2 the purposes of the provision of a system of conduits which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.
- 2.5 A direction applying the Code to a person may take effect:
- 2.5.1 in relation only to such places or localities as may be specified or described in the direction;

¹ “Electronic communications network” for the purposes of the Code has the same meaning as in the Communications Act 2003: see Telecommunications Act 1984, Schedule 2, paragraph 1(1) and section 32 of the Communications Act 2003.

² <http://www.legislation.gov.uk/ukxi/2011/1210/made>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:En:PDF>

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0037:0069:EN:PDF>

⁵ Section 109 of the Communications Act 2003 – see, at present, the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553), as amended by the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2009 (SI 2009 No. 584).

⁶ Section 106(4) of the Communications Act 2003.

- 2.5.2 for the purposes only of the provision of such electronic communications network, or part of an electronic communications network, as may be so specified or described; or
- 2.5.3 for the purposes only of the provision of such conduit⁷ system, or part of a conduit system, as may be so specified or described.⁸

Application process for applying the Code

- 2.6 Ofcom must not give a direction applying the Code in any person's case except on an application made for the purpose by that person.⁹
- 2.7 Any such application must be made in accordance with the requirements for the time being in force 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.¹⁰
- 2.8 As regards the content of an application, the current requirements¹¹ state that an application must contain the following information:
 - 2.8.1 in the case of a company, the company name, company number, address of the registered office and details of any subsidiaries, parents and affiliates;
 - 2.8.2 in the case of a partnership, contact name and address, name of partnership, address of principal place of business;
 - 2.8.3 in the case of an individual, the individual's name, address and contact details;
 - 2.8.4 a description of the electronic communications network or system of conduits which the applicant intends to provide, including the location of that network or system;
 - 2.8.5 the person's reasons for wishing to obtain a direction applying the Code to him, including an explanation of why it would not be practicable to him to provide the network or conduit system without the Code;
 - 2.8.6 a description of the purposes for which the electronic communications network (if applicable) is to be used, for example the type of electronic communications service to be provided over the network and who is likely to benefit from that service;
 - 2.8.7 in the case of providers of systems of conduits only, written evidence that they are making available or proposing to make available their system of conduits for use by providers of electronic communications networks for the purposes of the provision by those providers of their networks (e.g. any available contracts, letters from providers of electronic communications

⁷ "Conduit" includes a tunnel, subway, tube or pipe.

⁸ Section 106(5) of the Communications Act 2003.

⁹ Section 107(1) of the Communications Act 2003.

¹⁰ Section 107(2) of the Communications Act 2003.

¹¹ See Notification under section 107(2) of the Communications Act 2003 dated 6 October 2003 and published on 10 October 2003 at Annex B to statement entitled '*The Granting of the Electronic Communications Code by the Director General of Telecommunications – A Statement issued by the Director General of Telecommunications*'.

- networks confirming their intention of using that specific system of conduits for the provision of their networks);
- 2.8.8 where the applicant is able and willing to share electronic communications apparatus, evidence of his ability and willingness to share such apparatus;
 - 2.8.9 where applicable, a description of alternative arrangements to the direction applying the Code which have been sought;
 - 2.8.10 where available, a description of any measures taken or initiatives signed up to which demonstrate responsible use by the applicant of the Code; and
 - 2.8.11 evidence of the applicant's ability to put in place funds for meeting liabilities as defined in restrictions and conditions referred to in sections 109 to 117 of the Communications Act 2003 prior to the exercise of rights conferred by the Code.
- 2.9 As noted in the statement, Ofcom is willing to receive applications in electronic form.¹²

Time limit for making a decision on application

- 2.10 Regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011¹³ provides that, except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application. In other words, that time limit applies from the moment Ofcom receives an application that fully complies with the requirements described above.

Statutory consultation process on proposal

- 2.11 Before giving a direction applying the Code to the applicant in question, 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.¹⁴
- 2.12 Such a notification must contain the following¹⁵:
- 2.12.1 a statement of Ofcom's proposal;¹⁶
 - 2.12.2 a statement of Ofcom's reasons for that proposal;
 - 2.12.3 a statement of the period within which representations may be made to Ofcom about the proposal (which period must end no less than one month after the day of the publication of the notification¹⁷).

¹² As above.

¹³ SI 2011 No. 1210.

¹⁴ Section 107(6).

¹⁵ Section 107(7).

¹⁶ Subject to sections 113(7) and 115(5), the statement of Ofcom's proposal must contain a statement that Ofcom proposes to apply the code in the case of the person in question and set out any proposals of Ofcom to impose terms under section 106(5): see section 107(8) of the Communications Act 2003.

¹⁷ Section 107(9).

- 2.13 The publication by Ofcom of a notification must be a publication in such manner as Ofcom considers appropriate for bringing the notification to the attention of the persons who, in Ofcom's opinion, are likely to be affected by it.¹⁸
- 2.14 The notification published at Annex 1 to this document is a notification for such purposes, which notification should be read in conjunction with the entirety of this document, including the reasons set out in Section 3.

Relevant considerations in making a decision (four factors)

- 2.15 In considering whether to apply the Code in any person's case, Ofcom must have regard, in particular, to each of the following matters¹⁹:
- 2.15.1 the benefit to the public of the electronic communications network or conduit system by reference to which the Code is to be applied to that person;
 - 2.15.2 the practicability of the provision of that network or system without the application of the Code;
 - 2.15.3 the need to encourage the sharing of the use of electronic communications apparatus;
 - 2.15.4 whether the person in whose case it is proposed to apply the Code will be able to meet liabilities arising as a consequence of the application of the Code in that person's case and any conduct of that person in relation to the matters with which the Code deals.
- 2.16 For the purposes of this process, those four factors rank equally with Ofcom's statutory duties under sections 3 and 4 of the Communications Act 2003.²⁰ Where appropriate, outside of those statutory considerations, we will also have regard to any additional factors that, in our opinion, are relevant to the particular application.

Statutory duties

General duties

- 2.17 In carrying out its functions under the Communications Act 2003 (which includes giving a direction to apply the Code), Ofcom's principal duty as set out in section 3 of the Act is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.18 In so doing, we are required to secure a number of specific objectives and to have regard to a number of matters set out in section 3. As to the prescribed specific statutory objectives in section 3(2), we consider that the objective of securing the availability throughout the UK of a wide range of electronic communications services objectives as particularly relevant to this consultation.

¹⁸ Section 107(10) of the Communications Act 2003.

¹⁹ Section 107(4).

²⁰ Section 107(5).

- 2.19 In performing its duties, Ofcom is also required to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations are relevant, particularly:
- 2.19.1 the desirability of promoting competition in relevant markets;
 - 2.19.2 the desirability of encouraging investment and innovation in relevant markets; and
 - 2.19.3 the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom.
- 2.20 We have also had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, as well as the interest of consumers in respect of choice, price, quality of service and value for money.
- 2.21 Ofcom has a wide measure of discretion in balancing its statutory duties and objectives. In so doing, we will take account of all relevant considerations, including any responses received during this consultation process, in reaching our conclusions.

Specific duties for fulfilling Community obligations

- 2.22 The function of giving a direction to apply the Code would involve us exercising functions falling under the EU regulatory framework. As such, section 4 of the Communications Act 2003 requires us to act in accordance with the six European Community requirements for regulation.
- 2.23 In summary, these six requirements are:
- 2.23.1 to promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
 - 2.23.2 to contribute to the development of the European internal market;
 - 2.23.3 to promote the interests of all persons who are citizens of the European Union;
 - 2.23.4 to take account of the desirability of Ofcom's carrying out of its functions in a manner which, so far as practicable, does not favour one form of or means of providing electronic communications networks, services or associated facilities over another, i.e. to be technologically neutral;
 - 2.23.5 to encourage, to such extent as Ofcom considers appropriate for certain prescribed purposes, the provision of network access and service interoperability, namely securing efficient and sustainable competition, efficient investment and innovation and the maximum benefit for customers of communications providers;
 - 2.23.6 to encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of communications providers.

- 2.24 We consider that the first and fifth of those requirements are of particular relevance to our proposal in this consultation and that no conflict arises in this regard with the specific objectives in section 3 we have identified above as particularly relevant in this context.

Impact assessment and equality impact assessment

- 2.25 The analysis presented in the entirety of this consultation represents an impact assessment, as defined in section 7 of the Communications Act 2003.
- 2.26 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on the Ofcom website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf
- 2.27 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to what we propose.
- 2.28 There are two main options for this consultation:
- 2.28.1 give a direction to apply the Code to the Applicant; or
 - 2.28.2 not to give such a direction.
- 2.29 In carrying out our functions (again, something which includes giving a direction to apply the Code), we are also under a general duty under the Equality Act 2010 to have due regard to the need to:
- 2.29.1 eliminate unlawful discrimination, harassment and victimisation;
 - 2.29.2 advance equality of opportunity between different groups; and
 - 2.29.3 foster good relations between different groups,
- in relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 2.30 Such equality impact assessments ("EIAs") also assist us in making sure that we are meeting our principal duty under section 3 of the Communications Act 2003.
- 2.31 We have therefore considered what (if any) impact the proposal in this consultation may have on equality. We do not, however, consider the impact of the proposal in this consultation to be to the detriment of any group within society. We have therefore not carried out separate EIAs in relation to race or gender equality, or equality schemes under the Northern Ireland and Disability Equality Schemes.

Section 3

Reasons for proposal

Introduction

3.1 This Section contains our reasons for proposing to apply the Code to the Applicant.

Factual matters

Receipt of a completed application

- 3.2 On 16 February 2012 we received in confidence a draft application from the Applicant attached to an email.
- 3.3 On 6 March 2012 we advised the Applicant that we would require an amended application to be submitted addressing various points before we could fully consider it.
- 3.4 On 12 March 2012 a second and updated confidential draft application was submitted.
- 3.5 On 24 April a final non-confidential application was sent by the Applicant.
- 3.6 On the 4 May 2012 we received further information in relation to funds for liabilities.
- 3.7 Accordingly, we consider that the Applicant's completed application meeting the requirements described in Section 2 of this document was received on 4 May 2012.

The person to whom it is being sought the Code should apply

- 3.8 According to the application, the person seeking Code powers is:
- 3.8.1 Company name: Fibrowave Networks Limited
 - 3.8.2 Registered company number: 07817009
 - 3.8.3 Registered office: The Sidings, Station Road, Longstanton, Cambs, CB24 3DS
- 3.9 The Applicant is a wholly owned subsidiary of John Henry & Sons, whose registered company number is 03427211.

Description and location of the network or conduit system for Code powers

- 3.10 The Applicant plans to roll out their network in a phased approach. A Fibre to the Home solution will provide three villages in Cambridgeshire with Broadband services which currently does not figure in BT's broadband upgrade programme.
- 3.11 Within six months, the Applicant has indicated they will provide five street cabinets with Multiservice Access Nodes and Fibre distribution equipment being installed. The Applicant also intends to use BT's Openreach existing duct space, whilst utilising their Physical Infrastructure Access to deploy fibre-optic cable will enable them to supply superfast broadband initially, with telephony services, following in the future.

- 3.12 Further network infrastructure deployment is also planned within the next two years. This will range from a mixture of VDSL Fibre to the cabinet along with GPON Fibre to the home. TV White Space plans to be publically tested and trialled and additional terrestrial and satellite based solutions maybe also offered.

Analysis of the four factors

The benefit to the public of the electronic communications network by reference to which the Code is to be applied to the Applicant

- 3.13 The Applicant's main purpose for their proposed network is to roll out and provide superfast broadband to the rural communities who are at present unable to benefit from such services.
- 3.14 The Applicant's network will be used to transmit data and, later, voice solutions to customers, including domestic and businesses, schools, parish community halls and doctors surgeries.
- 3.15 The Applicant also intends ultimately to offer services as a Wholesale Connectivity Provider, providing last mile connectivity to other ISPs allowing them to also offer broadband services.
- 3.16 For these reasons, Ofcom considers that Code Powers would benefit the public as the network will serve retail and ultimately wholesale customers and is likely to increase competition in the provision of various broadband and telecom services in parts of the United Kingdom in the future.

The practicability of the provision of the network without the application of the Code

- 3.17 The Applicant states in its application that it requires access to the public highway and private land in order efficiently to build and maintain the infrastructure needed for its intended service. The application explains that Code powers will enable to carryout street works in a more coordinated fashion enabling the provision of the Applicant's services to homes and businesses more efficiently. The Applicant points to various practical and resource difficulties that arise without Code powers and the implications that it will have on its business.
- 3.18 The application also states they are intending to utilise existing apparatus of BT Openreach Physical Infrastructure Access at some point in the future, which is recognised by the Applicant being economically advantageous to them in the roll out of FTTH.

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

- 3.19 The Applicant has stated that it is willing to share its network as a Wholesaler, offering ISPs last mile connectivity over their physical network.
- 3.20 We consider that sharing of the use of apparatus would be encouraged by granting the Applicant Code Powers as a result of those stated intentions.

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

- 3.21 The Applicant has considered what needs to be covered by the fund is to be implemented in respect of specified liabilities. The Applicant has also reviewed the possible methodologies for funding such liabilities.
- 3.22 The Applicant enclosed a signed letter from one of its directors confirming provision of funding of specified liabilities will be put in place, once Code powers have been granted. The Applicant proposes that it maintains this fund by way of a surety bond.

Overall assessment

- 3.23 In addition to our consideration of the four factors discussed above in paragraph 2.15, we consider that our proposal would secure or further the performance of our statutory duties under sections 3 and 4 of the Communications Act 2003.
- 3.24 In particular, we consider that, if the Applicant's intended infrastructure plans through the use of Code powers are realised, there is the prospect of its provision contributing to the availability throughout the UK of a wider range of electronic communications services. We also believe that there is prospect of competition in the provision of electronic communications networks and services and associated facilities being promoted by our proposal, including the encouragement of investment and innovation. The availability and use of high speed broadband services throughout parts of East Anglia and East Midlands [and potentially other areas of the UK, would also be encouraged as a result of the Applicant's network.
- 3.25 The impact of implementing the proposal is likely to be low. Any costs to those affected to the Applicant's use of Code powers are likely to be outweighed by the benefits. On the other hand, the detrimental effect (including practicability) on the Applicant without such powers is likely to be significant. As noted in Section 2 paragraph 2.31 of this document, we are also of the view that the impact of our proposal is not likely to be to the detriment of any protected group within society.

Proposal

- 3.26 For these reasons we propose that Ofcom should give a direction applying the Code to the Applicant.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 10 September 2012**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://stakeholders.ofcom.org.uk/consultations/fibrewave/howtorespond/form>, 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 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please number.information@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Numbering Team
Ofcom
2nd Floor Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3061
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Numbering Team on 020 7981 3000.

Confidentiality

- A1.7 We believe 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. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish

all responses, including those that are marked as confidential, in order to meet legal obligations.

- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in September 2012.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 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, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 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

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 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 Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom 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. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 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 complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other 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

Please tick below what part of your response you consider is confidential, giving your reasons why

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 not to be published, 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)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Statutory notification

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

Proposal to give a direction applying the electronic communications code

Proposal in this Notification

1. Ofcom hereby proposes, in accordance with section 107(6) of the Act, to give a direction under section 106(3) of the Act applying the Code to the Applicant.
2. The proposed direction applying the Code to the Applicant on the terms proposed is set out in the Schedule hereto.
3. The effect of, and the reasons for, giving the proposed direction is set out in the accompanying consultation document.

Ofcom's duties

4. In making this proposal, 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.

Making representations

5. Representations on this proposal may be made to: Numbering Team, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, by no later than 5pm on **10 September 2012**.

Interpretation

6. In this Notification, unless the context otherwise requires and subject to paragraph 7 below, words and expressions used in this Notification shall have the same meaning as they have been ascribed in the Act.
7. In this Notification—
 - (a) “**Act**” means the Communications Act 2003;
 - (b) “**Applicant**” means Fibrowave Networks Limited, whose registered company number is 07817009;
 - (c) “**Code**” means the electronic communications code;
 - (d) “**Ofcom**” means the Office of Communications.
8. For the purpose of interpreting this Notification—
 - (a) headings and titles shall be disregarded;

- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
- (c) expressions cognate with those referred to in this Notification shall be construed accordingly.

9. The Schedule hereto forms part of this Notification.

Signed

A handwritten signature in black ink, appearing to read 'D. Stewart', with a stylized flourish at the end.

David Stewart
Competition Policy Director

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

10 August 2012

SCHEDULE

[Proposed] 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 4 May 2012.
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 10 August 2012, 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 10 September 2012.
6. Ofcom has considered every representation about the proposal received and duly made to it. For the reasons set out in the explanatory statement accompanying this proposed Direction, 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

7. 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 which the Applicant is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks;
 - (b) that application of the Code shall have effect throughout the United Kingdom.
8. In this proposed Direction, unless the context otherwise requires and subject to paragraph 9 below, words and expressions used in this proposed Direction shall have the same meaning as they have been ascribed in the Act.
9. In this Notification—
 - (a) “**Act**” means the Communications Act 2003;

- (b) “**Applicant**” means Fibrowave Networks Limited, whose registered company number is 07817009;
- (c) “**Code**” means the electronic communications code;
- (d) “**Ofcom**” means the Office of Communications.

10. For the purpose of interpreting this Notification—

- (a) headings and titles shall be disregarded;
- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament;
- (c) expressions cognate with those referred to in this Direction shall be construed accordingly.

9. This Direction shall take effect on the day it is published.

Signed



David Stewart
Competition Policy Director

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

10 August 2012