

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

### **Proposal to give a direction applying the Electronic Communications Code to GeneSYS Telecommunications Limited**

1. The Office of Communications (“Ofcom”) propose to give a direction under section 106(3) of the Communications Act 2003 (the “Act”) applying the electronic communications code (the “Code”) to GeneSYS Telecommunications Limited.
2. The draft Direction and accompanying explanatory statement setting out Ofcom’s reasons for the proposal are available at <http://www.ofcom.org.uk/consult/condocs/genesys/>. 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](mailto:Michael.galvin@ofcom.org.uk).
3. 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 **9 May 2005**.
4. 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](mailto: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](http://www.ofcom.org.uk)).
5. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.
6. In this Notification, “GeneSYS Telecommunications Limited” means GeneSYS Telecommunications Limited (registered company number 05295532).

**Philip Rutnam**  
**Partner, Competition and Markets**

**A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002**

**7 April 2005**

**[Draft] Direction under Section 106(3) of the Communications Act 2003  
applying the electronic communications code in the case of GeneSYS  
Telecommunications Limited**

**[A Notification of this proposal was published on 7 April 2005]**

Whereas:

- (A) On 25 February 2005, GeneSYS Telecommunications Limited made an application for the electronic communications code (the "Code") for the purposes of the provision by it of a system of conduits in the United Kingdom which GeneSYS Telecommunications Limited 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) GeneSYS Telecommunications Limited made the above-mentioned application 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 Code and the manner in which such an application is to be made;
- (C) On 4 April 2005, Ofcom published a notification of their proposal to give a direction applying the Code to GeneSYS Telecommunications Limited in accordance with section 107 of the Act;
- (D) Ofcom have considered every representation made to them about the proposed Direction;
- (E) 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 electronic communications code shall apply to GeneSYS Telecommunications Limited for the purposes of the provision by it of a system of conduits in the United Kingdom which GeneSYS Telecommunications Limited 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.

Definitions and Interpretation

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

"Act" means the Communications Act 2003;

"GeneSYS Telecommunications Limited" means GeneSYS Telecommunications Limited (registered company number 05295532);

"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.

3. 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.

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

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

**Philip Rutnam**  
**Partner, 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 25 February 2005, GeneSYS Telecommunications Limited (“GeneSYS”) applied for the electronic communications code (the “Code”) for the purposes of the provision by it of a system of conduits in the United Kingdom which GeneSYS 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. This application was made in accordance with section 107(1) of the Communications Act 2003 (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.

1.2 The Notification published under section 107(2) of the Act requires providers of systems of conduits to supply written evidence showing that they are making available, or proposing to make available, their systems of conduits for use by providers of electronic communications networks. In relation to this, it is first of all necessary to explain why GeneSYS believes that it needs the Code and, second, to explain why it would wish to share its conduits. The latter point is crucial in considering any applications for the Code under section 106(4)(b) of the Act. Ofcom can only grant the Code in given the circumstances set out in section 106(4).

1.3 The Highways Agency currently manages a communications network that runs adjacent to the majority of England’s motorways. The network is used for a number of purposes and these include emergency telephones, closed circuit television, and variable message signs which are connected to police control centres. The network therefore plays a crucial part in managing traffic safely. In its application, GeneSYS explained that the Highways Agency is expanding and upgrading this network to support technological initiatives that will make a significant contribution to safe roads, reliable journeys and informed travellers.

1.4 In view of the need to upgrade and expand its network, the Highways Agency decided that upgrading and expansion would be best achieved via a public private partnership. GeneSYS was the preferred bidder. The main purpose of the network is therefore to support the needs of the Highways Agency.

1.5 The main purpose of the system of conduits and the related transmission network is to support the needs of the Highways Agency and given the need for the network, the Highways Agency cannot allow the functionality and reliability of it to be compromised. The tender made this clear. Nonetheless, GeneSYS has explained that, subject to the consent of the Highways Agency, it would be willing to lease space within its conduits and that any requests to use its conduits would be considered. GeneSYS has also stated that any spare capacity in the transmission system would also be made available (again this would be subject to the consent of the Highways Agency) as this would be in GeneSYS’ best interests. GeneSYS explained that the agreement with the Highways Agency, amongst other things, provides GeneSYS with incentives to utilise any spare capacity within the transmission network as it would share with the Highways Agency any commercial revenue that leasing space generated.

## **Ofcom's duties**

1.6 In considering GeneSYS' application, 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)(a) "to further the interests of citizens in relation to communications matters" and the third Community requirement set out in section 4(5)(b) to "promote the interests of all persons who are citizens of the European Union". In terms of section 3(1)(a), Ofcom considers that the network concerned plays an essential role in traffic management. It also allows for emergency services to be contacted in relation to traffic accidents and it enables traffic control centres to alert motorists of resultant congestion and necessary speed restrictions. In terms of section 4(5)(b), efficient transportation networks are crucial to modern economies and therefore communications infrastructure used to support them that enable access to emergency services furthers the interests of citizens in relation to communications matters. It also promotes the interests of all persons of the European Union. Transportation networks are needed to deliver goods and an efficiently run communications networks that runs alongside the transportation network can only help to ensure that the transportation network is run efficiently.

1.7 As well as the requirements set out in section 3 and 4 of the Act, Ofcom has also had regard to its duties set out in section 107(4) of the Act. These are set out below.

## **The benefit to the public of the conduit system by reference to which the Code is to be applied to the applicant**

1.8 The foremost reason for the system of conduits and the transmission system concerned is to provide the Highways Agency with a reliable network that is capable of supporting its communications needs. These needs are varied and include the need to maintain basic telephony services (including emergency telephones that are located alongside motorways), closed-circuit television, and electronic displays giving details relating to, amongst other things, weather and speed restrictions. Advancements in technology are likely to increase the network's capabilities and this is likely to involve the installation of smarter devices that might help to secure safer roads and improve traffic management. For these reasons, the conduit system would therefore be of benefit to the public.

1.9 In addition, GeneSYS has explained that, subject to the consent of the Highways Agency, communications providers would be able to install their communications systems within its conduits and it would also lease any spare capacity within the network to other communications providers. This might help to increase competition in the provision of communications networks more generally and therefore indirectly this network might benefit the public.

1.10 For these reasons, Ofcom considers that the network concerned might directly (in terms of providing for securer and safer roads) and indirectly (in terms of assisting other providers rollout their networks) benefit the public.

## **The practicability of the provision of the conduit system without the Code**

1.11 In the main, the network concerned is sited on or underneath land that is owned by the Highways Agency. For these parts of the network, Code powers are not needed. However, certain assets are located on land that is not owned by the Highways Agency and it is because of this that GeneSYS is seeking Code powers. At

present, the Highways Agency has legal or informal rights of access to assets not directly sited on or underneath land that it owns. But the Highways Agency does not or may not have the ability in all cases to transfer rights of access to GeneSYS and it is therefore for this reason that GeneSYS needs Code powers.

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

1.12 The network concerned is generally located on or underneath land owned by the Highways Agency and it is therefore in its interest to ensure that the highways that it runs are not subject to uncoordinated street works. For these reasons, as part of its contract with the Highways Agency, GeneSYS is required to take account of competing requests for duct space between power, communications and other cable requirements in accordance with principles agreed with the Highways Agency. In addition, as explained in paragraph , GeneSYS has incentives to secure the most efficient use of the ducting and transmission system concerned as this would enable it to generate commercial revenues above those that it will obtain as a result of successfully winning the contract to manage the network.

### **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**

1.13 The requirement to provide funds to meet specified liabilities is relevant only to the extent that any street works are undertaken. Some of the work GeneSYS is likely to undertake will involve street works. However, GeneSYS has explained that all of these works would be in relation to equipment sited near to, on or underneath the Highways Agency's network of roads and, as it will be subject to an agreement with the Highways Agency under which it will be required to put substantial insurance in place, the Highways Agency has agreed that GeneSYS need not put additional funds in place. The insurance or other security provided by GeneSYS would provide cover in the event of liabilities.

### **How to respond**

1.14 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on **9 May 2005**.

1.15 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.

1.16 Please can you send your response to Michael.galvin@ofcom.org.uk.

1.17 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Michael Galvin

Competition and Markets  
4<sup>th</sup> Floor  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7783 4158  
Fax: 020 7783 4109

## **Confidentiality**

1.18 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](http://www.ofcom.org.uk), ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).

1.19 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.

1.20 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.

1.21 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**

1.22 Unless there are any reasoned objections to Ofcom's proposals, it intends to grant Code powers to GeneSYS shortly after the end of the consultation period.

## **Ofcom's consultation processes**

1.23 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.

1.24 This consultation is shorter than Ofcom's standard 10 week period because Ofcom believes that it is important that Code operators should be able to utilise these powers where appropriate as early as possible.

1.25 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](mailto: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.

1.26 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](mailto: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](http://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)

