



**Proposal to apply Code Powers to  
MS3 Networks Limited**  
Statutory notification under section 107(6) of the  
Communications Act 2003

Consultation

Publication date: 25 April 2014

Closing Date for Responses: 27 May 2014



# Contents

Section		Page
1	Summary	2
2	Background	4
3	Reasons for proposal	10
Annex		Page
1	Responding to this consultation	13
2	Ofcom's consultation principles	15
3	Consultation response cover sheet	16
4	Statutory notification	18

## 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 MS3 Network Limited, whose registered company number is 8190151 (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 The reasons for our 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 4 to this document.
- 1.3 The closing date for responses is 27 May 2014 and stakeholders wishing to respond to this consultation are directed to Annex 1 for information on how to do so.

## 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 Having considered the Applicant’s application for Code powers, we propose that the Code should have effect in its case for two purposes: firstly, the provision by the Applicant of its electronic communications network; and secondly, its provision of a system of conduits which will be made available for use by other providers of electronic communications networks.
- 1.6 According to the Applicant’s application, its electronic communications network comprises of a dark fibre optic cable network which is deployed in ducts underground and which connects to customer premises in Hull and the East Riding of Yorkshire. This network allows the Applicant to provide high speed broadband services and point to point solutions to UK businesses in both the public and private sectors. The Applicant states that the underground ducts amount to conduits and considers, therefore, that it is also providing a system of conduits.
- 1.7 The Applicant intends to maintain, operate and expand its network. In particular, it plans to deploy further fibre optic cables in ducts under both public highways and private land in Hull and the surrounding area.
- 1.8 We consider that our proposal is appropriate having regard to the considerations 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.

- 1.9 We will consider any responses we may receive by the closing date before making our decision as to 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.<sup>1</sup> 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”),<sup>2</sup> which came into force on 26 May 2011, included amendments to the Act for the purpose of implementing Directives 2009/136/EC<sup>3</sup> and 2009/140/EC.<sup>4</sup>
- 2.2 Other legislation may from time to time set out restrictions and conditions subject to which the Code applies.<sup>5</sup>

#### 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).<sup>6</sup>
- 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;

---

<sup>1</sup> “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.

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

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

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

<sup>5</sup> 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).

<sup>6</sup> 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 conduit<sup>7</sup> system, or part of a conduit system, as may be so specified or described.<sup>8</sup>

## 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.<sup>9</sup>
- 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.<sup>10</sup>
- 2.8 As regards the content of an application, the current requirements<sup>11</sup> 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

---

<sup>7</sup> "Conduit" includes a tunnel, subway, tube or pipe.

<sup>8</sup> Section 106(5) of the Communications Act 2003.

<sup>9</sup> Section 107(1) of the Communications Act 2003.

<sup>10</sup> Section 107(2) of the Communications Act 2003.

<sup>11</sup> 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.<sup>12</sup>

### **Time limit for making a decision on application**

- 2.10 Regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011<sup>13</sup> 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.<sup>14</sup>
- 2.12 Such a notification must contain the following<sup>15</sup>:
- 2.12.1 a statement of Ofcom's proposal;<sup>16</sup>
  - 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 notification<sup>17</sup>).

---

<sup>12</sup> As above.

<sup>13</sup> SI 2011 No. 1210.

<sup>14</sup> Section 107(6).

<sup>15</sup> Section 107(7).

<sup>16</sup> 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.

<sup>17</sup> 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.<sup>18</sup>
- 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 matters<sup>19</sup>:
- 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.<sup>20</sup> 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.
- 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:

---

<sup>18</sup> Section 107(10) of the Communications Act 2003.

<sup>19</sup> Section 107(4).

<sup>20</sup> Section 107(5).

- 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](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 3 April 2014 we received a fully completed application from the Applicant attached to an email.

3.3 Accordingly, we consider that the Applicant's completed application meeting the requirements described in Section 2 of this document was received on 3 April 2014.

### The person seeking Code powers

3.4 According to the application, the person seeking Code powers is:

3.4.1 Company name: MS3 Networks Limited

3.4.2 Registered company number: 8190151

3.4.3 Registered office: Owen House, Owen Avenue, Hessle, East Yorkshire, HU13 9PD.

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

3.5 According the Applicant's application, its electronic communications network comprises of a dark fibre optic cable network which is deployed in ducts underground. Individual fibre strands are connected to apparatus installed at customer premises in Hull and the East Riding of Yorkshire, which provides connectivity across England, Scotland and Wales. This network allows the Applicant to offer a variety of services, including the provision of high speed broadband services and point to point solutions to UK businesses in both the public and private sectors. The Applicant states that the underground ducts amount to conduits and considers, therefore, that it is also providing a system of conduits.

3.6 The Applicant intends to operate, maintain and expand its electronic communications network, including its system of conduits. In particular, it plans to deploy further fibre optic cables in ducts under both public highways and private land in Hull and the surrounding area. It has therefore requested that Ofcom does not impose any geographical restrictions on the locations for which any Code powers will have effect.

## Analysis of the four factors

### **The benefit to the public of the electronic communications network or conduit system by reference to which the Code is to be applied to the Applicant**

- 3.7 According to the Applicant, its network is designed to enable the transmission of voice, data, and video, as well as television, services to apparatus, which in turn will be connected to customers' premises. The Applicant's customers include businesses such as healthcare centres and council offices
- 3.8 The Applicant states that it already has agreements in place with managed service providers which grant these providers access to the Applicant's network and, therefore, enables them to use the network to deliver their services. The Applicant also states that it is in negotiations with a large multinational telecommunications company with a view to allowing it to connect its customer base to the Applicant's network.
- 3.9 The Applicant believes that there will be a "significant advantage" in having an alternative independent network in Hull to that of the incumbent operator and considers that its intention to expand its network will help to attract new businesses to the city.
- 3.10 For these reasons, Ofcom consider that granting the Applicant Code powers would benefit the public.

### **The practicability of the provision of the network or conduit system without the application of the Code**

- 3.11 The Applicant explains that the grant of Code powers is necessary for the practicable provision of its services because it requires access to public highways and private land in order to build and maintain the infrastructure required for its planned network expansion efficiently
- 3.12 In its application, the Applicant states that it has encountered various practical and resource difficulties that have arisen as a result of its current reliance on Section 50 notices under the New Roads and Street Works Act 1991. The Applicant adds that not having Code powers will affect its ability to overcome some of these obstacles when connecting customers to its network.
- 3.13 According to the Applicant, without Code powers, it would not be able to benefit from the same advantages available to its competitors, particularly within the area of Hull as it would not be able to provide its network as efficiently and effectively as would otherwise be possible. The Applicant believes, therefore, that without Code powers it would be placed at a competitive disadvantage.
- 3.14 The Applicant adds that, if it is not granted Code powers, its customers would incur far greater costs in getting connected to the Applicant's network than they would when connecting to a competitor's network. The Applicant concludes that this will, again, place it at a competitive disadvantage
- 3.15 The Applicant explains that a further disadvantage of not having Code powers would be the prevention of increased competition in Hull. This is because, without Code powers, the Applicant considers that it would not be able to install its underground conduits in a quick and cost effective manner in order to make those conduits available for use by other providers.

3.16 We consider, therefore, that the grant of Code powers is necessary for the practicable provision of the Applicant's network.

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

3.17 The Applicant states in its application that it intends to allow other service providers to access its network in order to deliver their services to end users. It has also confirmed that it will continue to allow third party providers of networks the right to deploy parts of their networks in its underground conduits.

3.18 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**

3.19 The Applicant has considered the quantum of its potential liabilities and the possible methodologies for funding such liabilities.

3.20 The Applicant enclosed with its application a certificate signed by its directors confirming that funding of specified liabilities will be put in place in the event that Code powers are granted. The Applicant proposes that it will maintain this fund by way of an insurance bond.

### **Overall assessment**

3.21 In addition to our consideration of the four factors discussed above, 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.

3.22 In particular, we consider that, if the Applicant's intended infrastructure plans through the use of Code powers are realised, it may contribute to the availability throughout the UK of a wider range of electronic communications services. We also believe that there is a 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.

3.23 The likely impact of implementing the proposal is likely to be low. Any costs to those affected by 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 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**

3.24 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 27 May 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeolders.ofcom.org.uk/consultations/ms3-network>, 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 contact [numbering.information@ofcom.org.uk](mailto:numbering.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  
2<sup>nd</sup> 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](http://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 May 2014.
- 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](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](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, 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](mailto: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](http://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/](http://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	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	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 **27 May 2014**.

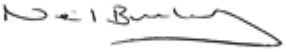
#### Interpretation

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 MS3 Networks Limited, whose registered company number is 8190151;
  - (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 "Neil Buckley", is enclosed in a thin black rectangular border.

**Neil Buckley**  
**Director of Investigations**

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

**25 April 2014**

## 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 03 April 2014.
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 25 April 2014, 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 27 May 2014.
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 MS3 Networks Limited, whose registered company number is 8190151;
- (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**

**Neil Buckley**  
**Director of Investigations**

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