

Direction under Section 106(3) of the Communications Act 2003 applying the electronic communications code in the case of Crown Castle UK Ltd

A Notification of this proposal was published on 26 May 2005

Whereas:

- (A) On 10 May 2005, Crown Castle UK Ltd (registered company number 3196207) made an application for the electronic communications code (the "Code") for the purposes of the provision of an electronic communications network in the United Kingdom in accordance with section 107(1) of the Communications Act 2003 (the 'Act') and the notification published by the Office of Communications ('Ofcom') by virtue of the Transitional Provisions under section 107(2) of the Act on 10 October 2003 setting out their requirements with respect to the content of an application for the electronic communications code and the manner in which such an application is to be made;
- (B) On 26 May 2005, Ofcom published a notification of their proposal to give a direction applying the Code to Crown Castle UK Ltd in accordance with section 107 of the Act;
- (C) Ofcom did not receive any representations in relation to the proposed Direction;
- (D) 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 Crown Castle UK Ltd for the purposes of the provision by Crown Castle UK Ltd of an electronic communications network to have effect in the United Kingdom.

Definitions and Interpretation

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

"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.

Stephen Unger
Director of Telecoms Technology, Competition and Markets

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

21 July 2005

Explanatory Statement

1.1 On 10 May 2005, Crown Castle UK Ltd (“Crown Castle”) applied for the electronic communications code (the “Code”) for the purposes of the provision by it of an electronic communications network. This application was made in accordance with section 107(1) of the 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 On 26 May 2005, Ofcom published a notification of its proposal to give a direction applying the Code to Crown Castle in accordance with section 107 of the Act. Ofcom asked for any comments on its proposal to be made by 24 June 2005. No responses were received.

1.3 In considering Crown Castle’s 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)(b) “to further the interests of consumers in relevant markets, where appropriate by promoting competition” and the first Community requirement set out in section 4(3)(a) to promote competition “in relation to the provision of electronic communications networks and services”. In this case, amongst other things, Crown Castle provides BBC transmission network services and provides apparatus used to support the five mobile network operators’ networks.

1.4 Prior to the implementation of the Act, Crown Castle could not benefit from the powers conferred upon Code operators as it does not run a telecommunications network. It is for this reason that Crown Castle has not had or benefited from Code powers. However, as a result of convergence, the distinction between networks has become increasingly blurred. This was recognised in drawing up the Act and there is therefore a broader interpretation of those that can and should be permitted to benefit from Code powers.

1.5 The proposed direction would help to promote competition, as Crown Castle provides apparatus used to support the five mobile network operators’ networks and is therefore important in terms of ensuring that the operators can all offer widespread coverage. The transmission network, meanwhile, helps to promote competition in television markets.

1.6 Although Crown Castle has been able to maintain its network without Code powers, Ofcom considers that a large network that helps to underpin competition in communications markets needs to benefit from Code powers much as any other network needs to benefit from Code powers. Crown has explained that it does not own the freehold interest of all of its networks sites and could therefore be asked to vacate a site without recourse to the powers that would be conferred upon it under the Code. This is not a satisfactory position to maintain.

1.7 In addition to the requirements of sections 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 electronic communications network by reference to which the Code is to be applied to the applicant

1.8 As explained in paragraph 1.3, the network concerned has two major functions. These are to run the BBC's transmission network services and to support the mobile network operators' networks. In order to support these networks, Crown Castle's estate comprises of over 3600 sites. Interruption to its broadcast transmission network services – for instance, if it had to vacate a site and had not found a suitable alternative – would have a very real and immediate impact on the area that that tower served. The powers that Ofcom propose to confer upon Crown Castle would allow it to exercise preventative rights that Code operators have in such cases. At present, it does not benefit from these rights.

1.9 Also, in terms of the apparatus used to support the mobile networks, its network helps to ensure widespread coverage and, importantly, helps to prevent a proliferation of masts as its network is not used solely for one operator.

1.10 For these reasons, Ofcom considers that it is appropriate to grant Code powers to Crown Castle.

The practicability of the provision of the network without the Code

1.11 Code powers enable code operators to benefit from, amongst other things, the ability to install or maintain infrastructure sited beneath public highways without the need to apply for a specific licence to do so under the New Road and Street Works Act 1991 and benefit from certain exemptions under Town and Country Planning legislation¹. In this case, Crown Castle has been able to maintain its network without Code powers. However, that does not mean that it would not have benefited from the powers conferred upon Code powers. Indeed, far from it. Crown Castle believes that normal Town and Country Planning legislation does not provide it with adequate security in relation to leasehold sites which it needs to access and develop to ensure the stability and growth of its broadcast transmission network and its other sites.

1.12 Also, as explained in paragraph 1.3, Crown Castle was not permitted to benefit from Code powers prior to the Act. It is for this reason that it has not historically benefited from Code powers unlike other electronic communications networks.

1.13 The absence of Code powers would also place Crown Castle at a competitive disadvantage in the broadcast transmission network.

1.14 For these reasons, Ofcom considers that it should grant Code powers to Crown Castle.

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

1.15 In terms of its broadcast transmission facilities, Crown Castle has a reciprocal network sharing arrangement with ntl the other major transmission broadcast provider. The application also made it clear that Crown Castle believed that the absence of Code powers and the associated rights might have been a factor considered by mobile operators in deciding whether or not to site their antennae on masts owned by Crown Castle. Crown Castle believes that the lack of certainty in

¹ See Part 24 of the Town and Country Planning, England and Wales (General Permitted Development) Order 1995. SI 1995/418 as amended. Planning (General Development) (Amendment) Order (Northern Ireland) 2003 SR No. 98. Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2001 SSI 2001/266.

relation to tenure must be a relevant consideration. Nonetheless, Crown Castle still averages approximately 1.5 tenants per site across its entire portfolio and it is therefore clear to see that it wishes to encourage infrastructure sharing.

1.16 More generally, Crown Castle has explained that it has developed a fast track site share process under which it will handle and turnaround enquiries for site sharing and handing over a completed installation within 150 days.

1.17 For these reasons, Ofcom is satisfied that Crown Castle would be willing to – and already has a proven record of – sharing its electronic communications apparatus.

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

1.18 Crown Castle has confirmed that it would put sufficient funds in place should it be granted the Code. It explained that it already has in place insurance cover and other third party liabilities in place and therefore it believes that it would be able to put in place funds to cover any liabilities that might occur under Regulation 16. A letter to this effect was sent to Ofcom.

1.19 Crown Castle has access to a large portfolio of assets and Ofcom considers that it would be possible for Crown Castle to put in place funds to meet any potential liabilities.