

## **SCHEDULE**

### **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 18 December 2018.
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 1 February 2019, 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 1 March 2019.
6. Ofcom received two representations concerning the proposal. Neither respondent objected to the application of Code powers to the Applicant specifically, nor did they suggest that Ofcom's provisional conclusions (including on the factors to which Ofcom is required to have regard when considering an application for Code powers) were incorrect. Both instead raised more general concerns about the Code regime itself and, in particular, about the potential health issues arising from weak electromagnetic fields that might be generated by communications equipment deployed by the Applicant and other persons to whom Ofcom applies the Code. Ofcom considers these comments are more pertinent to Government policy concerning the safety of non-ionising radiation rather than the assessment of individual applications for Code powers, and does not consider that it would be appropriate to deny Code powers to the Applicant for this reason.
7. For the reasons set out in the explanatory statement accompanying the notification referred to in paragraph 5, 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**

8. 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:
    - i. an electronic communications network; and
    - ii. a system of infrastructure 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; and
- (b) that application of the Code shall have effect throughout the United Kingdom.

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

#### **Interpretation**

10. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means toob Limited, whose registered company number is 11051348;
- (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) “**Ofcom**” means the Office of Communications.

11. For the purpose of interpreting this Direction—

- (a) headings and titles shall be disregarded;
- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

**Signed**



**Brian Potterill**

**Competition Policy Director**

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

**12 March 2019**