

## **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 25 February 2019.
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 27 June 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 26 July 2019.
6. Ofcom received one representation, objecting to the proposal. The respondent suggested that Ofcom should not give a direction applying the Code to the Applicant for the purposes of the provision of a system of infrastructure (pursuant to section 106(4)(b) of the Act) as the Applicant would not be providing a system of infrastructure itself, but instead act as a managing agent for others who provide such systems. Ofcom sought further information from the Applicant. The Applicant has confirmed that whilst it has hitherto acted as a managing agent for providers of systems of infrastructure, its application for Code powers is the first step by it in a transition towards making available a system of infrastructure in its own right. The Applicant explained, in particular, that it plans to: lease sites from their owners, develop infrastructure on those sites and offer services to telecom providers directly.
7. Having considered the objection to the proposal and the clarification provided by the Applicant, it is Ofcom's view that the Applicant plans to provide a system of infrastructure which it is proposing to make available for use by providers of electronic communications networks for the purposes of the provision by them of their networks and that it is appropriate to give a direction applying the Code to the Applicant for that purpose.
8. For the reasons set out in the explanatory statement accompanying Ofcom's consultation, 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**

9. 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 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.

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

### **Interpretation**

**11.** In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means Michael Aubrey Partnership Limited, whose registered company number is 03002348;
- (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) “**Ofcom**” means the Office of Communications.

**12.** 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

27 August 2019