

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 29 January 2021.
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 26 May 2021, Ofcom published a notification of its proposal to give a direction applying the Code to the Applicant. That notification invited representations to Ofcom by no later than 5pm on 26 June 2021.
6. Ofcom received one representation objecting to the proposal. The respondent was concerned that the grant of Code powers would exempt the Applicant (and other persons to whom Ofcom applies the Code) from certain obligations relating to street works reinstatement under the NRSWA 1991. This is not the case. The Code confers a statutory right to execute street works, meaning that a person to whom the Code is applied is an ‘undertaker’ for the purposes of the NRSWA 1991.
7. 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 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 an electronic communications network; 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) “**The Applicant**” means Tiger Fibre Limited whose registered company number is 12550598;

- (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) “**Ofcom**” means the Office of Communications;
- (e) “**NRSWA 1991**” means New Roads and Street Works Act 1991.

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

A handwritten signature in black ink, appearing to read 'BP', is positioned to the left of a vertical line.

Brian Potterill

Competition Policy Director

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

9 July 2021