

## **Direction under section 106(3) of the Communications Act 2003 applying the electronic communications code**

### **Background**

1. Fibrus Network Ltd (Fibrus) was granted Code powers, under a direction given by Ofcom on 20 June 2018, for the purposes of the provision by Fibrus of an electronic communications network throughout the United Kingdom but with the condition that those powers do not extend to the installation of any Infrastructure on, under or over the public highway (the Condition)<sup>1</sup>.
2. Pursuant to section 115(1) and (4) of the Act, Ofcom may at any time modify the terms on which, by virtue of section 106(5), the code is applied in a person's case by giving a further direction under section 106 to the person in whose case the electronic communications code has been applied by the direction being modified.
3. Prior to giving a further direction to modify the terms on which, by virtue of section 106(5) of the Act, the Code applies to the person, 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.
4. On 22 July 2022, Ofcom published a notification in accordance with section 107(6) of the Act of a proposal to give a further direction modifying the terms on which the Code applies to Fibrus to remove the Condition. That notification invited representations to Ofcom by no later than 5pm on 22 August 2022.
5. For the reasons set out in the explanatory statement accompanying the above mentioned notification, Ofcom has considered and acted in accordance with section 115(4A) of the Act, 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, that the terms on which the Code applies to Fibrus by virtue of section 106(5) of the Act under its existing direction given by Ofcom on 20 June 2018, shall be modified as follows—
  - (a) the Code shall continue to apply to Fibrus for the purposes of the provision by Fibrus of an electronic communications network ;
  - (b) the condition specifying that the Code powers do not extend to the installation of any infrastructure on or over the public highway shall be removed; and
  - (c) the application of the Code shall continue to have effect throughout the United Kingdom.

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

### **Interpretation**

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<sup>1</sup> [Direction under section 106\(3\) of the Communications Act 2003 applying the electronic communications code \(ofcom.org.uk\)](https://www.ofcom.org.uk/consult/condocs/1063/1063.pdf)

**10. In this Direction—**

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Fibrus**” means Fibrus Networks Limited, whose registered company number is NI612703;
- (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**

A handwritten signature in black ink, appearing to read 'Brian Potterill', is written over 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

30 August 2022