

The logo for Ofcom, featuring the word "Ofcom" in a bold, red, sans-serif font. Below the text is a horizontal bar with a color gradient from purple to yellow.

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# Proposal to apply Code Powers to Cornerstone Telecommunications Infrastructure Limited

Statutory notification under section 107(6) of the  
Communications Act 2003

Further consultation

Publication date: 21 April 2017

Closing Date for Responses: 22 May 2017

# About this document

On 9 December 2016 we issued a public consultation in which we proposed to apply Code powers to Cornerstone Telecommunications Infrastructure Limited (“CTIL”) for the purpose of the provision by it of an electronic communications network.

The grant of Code powers is intended to assist persons that provide an electronic communications network and/or system of conduits. In particular, persons with Code powers may:

- construct and maintain infrastructure on public land (streets) without needing to obtain a specific street works licence to do so;
- benefit from certain immunities from the Town and Country Planning legislation; and
- apply to the Court in order to obtain rights to execute works on private land in the event that agreement cannot be reached with the owner of that land.

In light of responses received to our December consultation, CTIL has revised its application for Code powers and has asked Ofcom to take into account that it provides a system of conduits. Having considered CTIL’s revised application and the responses to our previous consultation, we have decided to amend our previous proposal.

This document sets out details of our revised proposal to apply Code powers to CTIL. Ofcom will consider any responses to this consultation before deciding whether or not to make a direction, under section 106(3) of the Act, applying the Code to CTIL.

# Contents

Section		Page
1	Summary	1
2	Background	3
3	Reasons for proposal	8
Annex		Page
1	Responding to this consultation	13
2	Ofcom's consultation principles	15
3	Consultation response cover sheet	16
4	Statutory notification	18

## Section 1

# Summary

## Purpose of further consultation

- 1.1 On 9 December 2016, Ofcom published a consultation in which it proposed to apply Code powers to Cornerstone Telecommunications Infrastructure Limited (the “**Applicant**”) for the purpose of the provision by it of an electronic communications network (the “**December 2016 Consultation**”). The deadline for responses to the December 2016 Consultation was 9 January 2017.
- 1.2 In light of responses received to the December 2016 Consultation, which are summarised below, the Applicant has revised its application for Code powers and has asked Ofcom to take into account that it provides a system of conduits.
- 1.3 Having considered the Applicant’s revised application together with the responses to our December 2016 Consultation, we have decided to amend our previous proposal. In particular, whilst we remain minded to apply the Code to the Applicant, we propose to do so for the purpose of the provision by the Applicant of a system of conduits which it 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
- 1.4 This document therefore constitutes a further consultation on the grant of Code powers to the Applicant. The closing date for responses is **22 May 2017** and stakeholders wishing to respond are directed to Annex 1 for information on how to respond.

## Responses to the December 2016 Consultation

- 1.5 Ofcom received three responses to the December 2016 Consultation. One of these, from Vodafone UK, supported Ofcom’s proposal to grant Code powers to the Applicant and explained that this would expedite further 4G mobile rollout, for the benefit of UK consumers.
- 1.6 However, two respondents argued against the application of the Code to the Applicant. By way of a summary, they did so on the basis that:
  - 1.6.1 the Applicant does not operate an electronic communications network or system of conduits and therefore cannot be granted Code powers. In particular, both respondents noted that the Applicant was created as a joint venture in order to manage the ‘passive infrastructure’ on Vodafone and Telefonica’s mast site. They stated that, as the Applicant confirmed that passive infrastructure is “*anything that doesn’t relate to the transmission of a signal*”, it cannot be the provider of an electronic communications network;
  - 1.6.2 Vodafone and Telefonica already operate mobile networks in the United Kingdom and have been granted Code powers. In the respondents’ view, there would therefore be no public benefit in applying Code powers to the Applicant, and the Applicant would benefit from the protections of the Code indirectly in any event;

- 1.6.3 Vodafone and Telefonica already share network sites and so the need to encourage the sharing of electronic communications apparatus is not relevant when considering the Applicant's application for Code powers; and
- 1.6.4 the Applicant may not be able to meet its liabilities arising as a result of the application of the Code, particularly as its recent accounts suggest that it is making a loss.

## Modified Proposal

- 1.7 Ofcom has carefully considered each of the responses provided to its December 2016 Consultation, together with the revised application put forward by the Applicant.
- 1.8 Having done so, Ofcom now proposes that the Code should have effect in the Applicant's case for the provision by it of a system of conduits which it 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 network in the United Kingdom.
- 1.9 In reaching this view, Ofcom has taken into account (amongst other things) that the Applicant has subsequently confirmed in its revised application that it provides a system of conduits as it undertakes, amongst other things, the provision of passive infrastructure on sites including, but not exclusively limited to: masts/towers, cabins, cabinets, ducts and cable trays which are installed both horizontally and vertically, and power supplies (with associated cabling).
- 1.10 We consider that this proposal is appropriate having regard to the matters set out in section 107(4) of the Communications Act 2003 (the "**Act**"). We consider that the performance of our statutory duties in sections 3 and 4 of that Act would be secured and furthered in relation to this proposal.
- 1.11 We will consider any responses we may receive by the closing date before making our decision as to whether we should give a direction applying the Code to the Applicant.

## Remainder of this document

- 1.12 In **Section 2**, we set out some further background on the Code (including the procedure that applies in this context). We provided this background in the December 2016 Consultation, but have chosen to include it in this further consultation to assist readers, and for completeness.
- 1.13 In **Section 3**, we set out in more detail the reasons for our proposal. This includes our consideration of representations received in response to the December 2016 Consultation.
- 1.14 **Annexes 1 to 3** provide details on how to respond to this further consultation and on Ofcom's consultation principles.
- 1.15 At **Annex 4**, we have set out a revised draft direction applying the Code to the Applicant.

## Section 2

# Background

## The Code

- 2.1 The Code is designed to facilitate the installation and maintenance of electronic communications networks.<sup>1</sup> It confers rights on providers of such networks and on providers of systems of conduits which are made available for use by providers of electronic communications networks for the purposes of the provision of those networks, to install and maintain apparatus in, over and under land and results in considerably simplified planning procedures.
- 2.2 Where the Code is applied in any person's case, it may be subject to restrictions and conditions set out in other legislation from time to time.<sup>2</sup>

## The application of the Code

- 2.3 The Code only has effect in the case of a person to whom it is applied by a direction given by Ofcom (or, in the case of the Secretary of State or any Northern Ireland department, where the Secretary of State or that department is providing or proposing to provide an electronic communications network).<sup>3</sup>
- 2.4 The only purposes for which the Code may be applied in a person's case by a direction are:
- 2.4.1 the purposes of the provision of an electronic communications network; or
  - 2.4.2 the purposes of the provision of a system of conduits which he 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.<sup>4</sup>
- 2.5 A direction applying the Code to a person may take effect:
- 2.5.1 in relation only to such places or localities as may be specified or described in the direction;
  - 2.5.2 for the purposes only of the provision of such electronic communications network, or part of an electronic communications network, as may be so specified or described; or

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<sup>1</sup> "Electronic communications network" for the purposes of the Code has the same meaning as in the Act: see Telecommunications Act 1984, Schedule 2, paragraph 1(1) and section 32 of the Act.

<sup>2</sup> Section 109 of the Act – see, at present, the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553), as amended by the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2009 (SI 2009 No. 584) and the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013 (SI 2013 No. 1403).

<sup>3</sup> Section 106(3) of the Act.

<sup>4</sup> Section 106(4) of the Act.

- 2.5.3 for the purposes only of the provision of such conduit<sup>5</sup> system, or part of a conduit system, as may be so specified or described.<sup>6</sup>

## Application process for applying the Code

- 2.6 Ofcom must not give a direction applying the Code in any person's case except on an application made for the purpose by that person.<sup>7</sup>
- 2.7 Any such application must be made in accordance with the requirements for the time being in force 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.<sup>8</sup>

## Time limit for making a decision on application

- 2.8 Regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011<sup>9</sup> provides that, except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application. In other words, that time limit applies from the moment Ofcom receives an application that fully complies with the requirements described above.

## Statutory consultation process on proposal

- 2.9 Before giving a direction applying the Code to the applicant in question, 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.<sup>10</sup>
- 2.10 Such a notification must contain the following<sup>11</sup>:
- 2.10.1 a statement of Ofcom's proposal;<sup>12</sup>
  - 2.10.2 a statement of Ofcom's reasons for that proposal;
  - 2.10.3 a statement of the period within which representations may be made to Ofcom about the proposal (which period must end no less than one month after the day of the publication of the notification<sup>13</sup>).

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<sup>5</sup> "Conduit" includes a tunnel, subway, tube or pipe.

<sup>6</sup> Section 106(5) of the Act.

<sup>7</sup> Section 107(1) of the Act.

<sup>8</sup> Section 107(2) of the Act. For the current requirements, see the Notification under section 107(2) of the Communications Act 2003, dated 6 October 2003, at Annex B to the statement entitled '*The Granting of the Electronic Communications Code by the Director General of Telecommunications – A Statement issued by the Director General of Telecommunications*', published on 10 October 2003

<sup>9</sup> SI 2011 No. 1210.

<sup>10</sup> Section 107(6) of the Act.

<sup>11</sup> Section 107(7) of the Act.

<sup>12</sup> Subject to sections 113(7) and 115(5) of the Act, the statement of Ofcom's proposal must contain a statement that Ofcom proposes to apply the code in the case of the person in question and set out any proposals of Ofcom to impose terms under section 106(5): see section 107(8) of the Act.

<sup>13</sup> Section 107(9) of the Act.

- 2.11 Ofcom must publish a notification in such manner as Ofcom considers appropriate for bringing the notification to the attention of the persons who, in Ofcom's opinion, are likely to be affected by it.<sup>14</sup>
- 2.12 The notification published at Annex 4 to this document is a notification for such purposes, which notification should be read in conjunction with the entirety of this document, including the reasons set out in Section 3.

## Relevant considerations in making a decision (four factors)

- 2.13 In considering whether to apply the Code in any person's case, Ofcom must have regard, in particular, to each of the following matters<sup>15</sup>:
- 2.13.1 the benefit to the public of the electronic communications network or conduit system by reference to which the Code is to be applied to that person;
  - 2.13.2 the practicability of the provision of that network or system without the application of the Code;
  - 2.13.3 the need to encourage the sharing of the use of electronic communications apparatus;
  - 2.13.4 whether the person in whose case it is proposed to apply the Code will be able to meet liabilities arising as a consequence of the application of the Code in that person's case and any conduct of that person in relation to the matters with which the Code deals.
- 2.14 For the purposes of this process, those four factors rank equally with Ofcom's statutory duties under sections 3 and 4 of the Communications Act 2003 (the "**Act**").<sup>16</sup> Where appropriate, outside of those statutory considerations, we will also have regard to any additional factors that, in our opinion, are relevant to the particular application.

## Statutory duties

### General duties

- 2.15 In carrying out its functions under the Act (which includes giving a direction to apply the Code), Ofcom's principal duty as set out in section 3 of the Act is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.16 In so doing, we are required to secure a number of specific objectives and to have regard to a number of matters set out in section 3. As to the prescribed specific statutory objectives in section 3(2), we consider that the objective of securing the availability throughout the UK of a wide range of electronic communications services as particularly relevant to this consultation.

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<sup>14</sup> Section 107(10) of the Act.

<sup>15</sup> Section 107(4) of the Act.

<sup>16</sup> Section 107(5) of the Act.



- 2.17 In performing its duties, Ofcom is also required to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations are relevant, particularly:
- 2.17.1 the desirability of promoting competition in relevant markets;
  - 2.17.2 the desirability of encouraging investment and innovation in relevant markets; and
  - 2.17.3 the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom.
- 2.18 We have also had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, as well as the interest of consumers in respect of choice, price, quality of service and value for money.
- 2.19 Ofcom has a wide measure of discretion in balancing its statutory duties and objectives. In so doing, we will take account of all relevant considerations, including any responses received during this consultation process, in reaching our conclusions.

### **Specific duties for fulfilling Community obligations**

- 2.20 The function of giving a direction to apply the Code would involve us exercising functions falling under the EU regulatory framework. As such, section 4 of the Act requires us to act in accordance with the six European Community requirements for regulation.
- 2.21 In summary, these six requirements are:
- 2.21.1 to promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
  - 2.21.2 to contribute to the development of the European internal market;
  - 2.21.3 to promote the interests of all persons who are citizens of the European Union;
  - 2.21.4 to take account of the desirability of Ofcom's carrying out of its functions in a manner which, so far as practicable, does not favour one form of or means of providing electronic communications networks, services or associated facilities over another, i.e. to be technologically neutral;
  - 2.21.5 to encourage, to such extent as Ofcom considers appropriate for certain prescribed purposes, the provision of network access and service interoperability, namely securing efficient and sustainable competition, efficient investment and innovation and the maximum benefit for customers of communications providers;
  - 2.21.6 to encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of communications providers.

- 2.22 We consider that the first and fifth of those requirements are of particular relevance to our proposal in this consultation and that no conflict arises in this regard with the specific objectives in section 3 we have identified above as particularly relevant in this context.

### **Impact assessment and equality impact assessment**

- 2.23 The analysis presented in the entirety of this consultation represents an impact assessment, as defined in section 7 of the Act.
- 2.24 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on the Ofcom website:  
[http://www.ofcom.org.uk/consult/policy\\_making/guidelines.pdf](http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf)
- 2.25 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to what we propose.
- 2.26 There are two main options for this consultation:
- 2.26.1 give a direction to apply the Code to the Applicant; or
  - 2.26.2 not to give such a direction.
- 2.27 In carrying out our functions (again, something which includes giving a direction to apply the Code), we are also under a general duty under the Equality Act 2010 to have due regard to the need to:
- 2.27.1 eliminate unlawful discrimination, harassment and victimisation;
  - 2.27.2 advance equality of opportunity between different groups; and
  - 2.27.3 foster good relations between different groups,
- in relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.
- 2.28 Such equality impact assessments ("EIAs") also assist us in making sure that we are meeting our principal duty under section 3 of the Act.
- 2.29 We have therefore considered what (if any) impact the proposal in this consultation may have on equality. We do not, however, consider the impact of the proposal in this consultation to be to the detriment of any group within society. We have therefore not carried out separate EIAs in relation to race or gender equality, or equality schemes under the Northern Ireland and Disability Equality Schemes.

## Section 3

# Reasons for modified proposal

## Introduction

3.1 This Section contains our reasons for proposing to apply the Code to the Applicant.

## Factual matters

### Receipt of a completed application

3.2 On 24 March 2017, we received a revised application from the Applicant.

3.3 Accordingly, we consider that the Applicant's completed application meeting the requirements referred to in Section 2 of this document was received on 24 March 2017.

### The person seeking Code powers

3.4 According to the application, the person seeking Code powers is:

3.4.1 Company name: Cornerstone Telecommunications Infrastructure Limited

3.4.2 Registered company number: 08087551

3.4.3 Registered office: The Exchange Building 1330, Arlington Business Park, Theale, Berkshire, RG7 4SA

### Description and location of the network or conduit system for Code powers

3.5 As explained in our previous consultation, the Applicant is a joint venture company established by its parent companies, Vodafone and Telefonica. Its parent companies both have their own mobile networks in the United Kingdom and compete to provide mobile services at both the wholesale and retail level. However, in 2012, they agreed to work together to improve mobile coverage across the United Kingdom. Under this agreement, they agreed to share the physical infrastructure at the end of their networks (in particular, mobile cell sites or 'masts') and build out some new sites. This agreement is commonly referred to as 'Project Beacon'.

3.6 The Applicant has explained that it was created as a result of Project Beacon in order to manage the passive infrastructure on Vodafone and Telefonica's mast sites. It has explained in its revised application that it provides a system of conduits as it undertakes, amongst other things, the provision of passive infrastructure on sites including (but not exclusively limited to) masts/towers, cabins, cabinets, ducts and cable trays which are installed both horizontally and vertically, and power supplies (with associated cabling).

3.7 As explained in Section 1, some respondents to our December 2016 Consultation suggested that the Applicant does not operate an electronic communications network or system of conduits and therefore cannot be granted Code powers. Ofcom agrees that it may only apply Code powers to a person if it is the provider of an electronic communications network or a system of conduits. However, having considered the

Applicant's revised application, it is satisfied that the Applicant provides a system of conduits which it is making available, or proposing to make available, for use by the providers of electronic communications networks for the purposes of the provision by them of their networks.

- 3.8 Whilst the Act does not provide an exhaustive definition of the term "system of conduits", section 106(7) of the Act explains that a "*conduit*" is stated to include a tunnel, subway, tube or pipe. For the reasons set out at paragraph 3.6 above, Ofcom is satisfied that the masts and ducting provided by the Applicant and used by (amongst others) Vodafone and Telefonica for the purposes of the provision by them of their mobile networks can be considered to constitute a system of conduits.
- 3.9 Ofcom is mindful, in reaching this view, of its duty under section 4(6)(b) of the Act. This section requires Ofcom to carry out its duties "*in a manner which, so far as practicable, does not favour...one means of providing or making available such a network over another*". Ofcom considers that, in light of this duty, it should not favour subterranean conduits for fixed communications over vertical conduits used for radio communications. This is consistent with Ofcom's decision to apply Code powers to Spyder Facilities Limited in 2005.<sup>17</sup>

## Analysis of the four factors

### The benefit to the public of the system of conduits by reference to which the Code is to be applied to the Applicant

- 3.10 We explained in the December 2016 Consultation why we considered that granting the Applicant Code powers would benefit the public. Whilst we are now amending our proposal such that the grant of Code powers to the Applicant would be for the purposes of the provision by it of a system of conduits, we consider that the benefits we highlighted in the December 2016 Consultation remain valid.
- 3.11 In particular, the Applicant has explained that its system of conduits is used by Vodafone and Telefonica in order to offer wholesale and retail services, and in particular 4G services, to their customers in competition with other mobile network operators and with each other. We also note that, in its revised application, the Applicant explained that its system of conduits are also shared with other network operators, public authorities, taxi companies and the emergency services.
- 3.12 We consider that the Applicant's conduit system therefore facilitates competition in the provision of electronic communications services, for the benefit of consumers, as it might enable mobile operators to roll out 4G mobile services more rapidly and cost-effectively.
- 3.13 Further, as the Applicant leases space on its masts and ducting to more than one mobile operator, Ofcom also believes that the granting of Code powers to the Applicant might help to reduce the need for duplicative electronic communications apparatus, thereby furthering the interests of citizens and consumers in the United Kingdom.
- 3.14 Two respondents to the December 2016 Consultation explained that they do not believe the Applicant's network benefits the public and, in support of this, noted that Vodafone and Telefonica already have Code powers which can be used to protect their masts and sites. However, for the reasons discussed above, Ofcom considers

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<sup>17</sup> See [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/33226/spyder.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/33226/spyder.pdf)

that the Applicant's system of conduits does benefit the public and that this is the case irrespective of whether those network providers which use that conduit system also have Code powers.

### **The practicability of the provision of the system of conduits without the application of the Code**

- 3.15 For the reasons set out in the December 2016 Consultation, the Applicant has explained that it is essential, for it to operate under the Project Beacon arrangements and to extend and maintain its system of conduits, to be granted Code powers. Amongst other things, the Applicant has explained that it would be impracticable to maintain and expand its system of conduits by applying for individual street works licences under section 50 of the New Roads and Street Works Act 1991, given the costs and delays associated with obtaining such licences.
- 3.16 Whilst we recognise that both Vodafone and Telefonica already have the benefit of Code powers, it is not clear to us that this necessarily means the provision of the Applicant's system of conduits is practicable without Code powers. Vodafone and Telefonica's Code powers were granted to them for the purposes of the provision by them of their electronic communications network and system of conduits; not the provision by the Applicant, which is a separate legal person, of its system of conduits.
- 3.17 In light of the above, and for the reasons set out in the December 2016 Consultation, we consider that the grant of Code powers is necessary for the practical provision of the Applicant's system of conduits.

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

- 3.18 In the December 2016 Consultation, we explained our provisional view that sharing of the use of apparatus would be encouraged by granting the Applicant Code powers. We have not sought to repeat that reasoning here, but are of the view that it remains valid in this consultation.
- 3.19 We note that, in response to the December 2016 Consultation, one respondent suggested that the need to encourage sharing of the use of electronic communications apparatus is not relevant (when assessing the Applicant's application for Code powers) as Telefonica and Vodafone already share their apparatus. We do not agree with this view. The need to encourage the sharing of the use of electronic communications apparatus is one of the four factors to which Ofcom is required to have regard, under section 107(4)(c) of the Act, when assessing an application for Code powers. Further, the fact that the Applicant's conduit system already facilitates the sharing of electronic communications apparatus between Vodafone and Telefonica should not, in our view, justify a refusal to grant Code powers to the Applicant.
- 3.20 Further, we are mindful that a decision by Ofcom to refuse to grant Code powers to the Applicant could actually stifle the sharing of electronic communications apparatus, particularly in light of our provisional view (discussed above) that the grant of Code powers is necessary for the practical provision of the Applicant's system of conduits. As noted above, the Applicant's system of conduits is currently used by two large mobile network operators (Vodafone and Telefonica) as well as smaller network operators and third parties. The Applicant has also confirmed that part of its business plan is to provide site access to further third parties. Its conduit system therefore

currently facilitates the sharing of electronic communications apparatus and is expected to continue doing so in the future.

- 3.21 For the reasons set out above and in the December 2016 Consultation, we consider that sharing of the use of apparatus would be encouraged by granting the Applicant Code powers.

**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**

- 3.22 In response to the December 2016 Consultation, two respondents expressed concern that the Applicant may not be in a position to meet its liabilities arising from the application of the Code. Both noted that the Applicant's most recent accounts suggest that its liabilities are greater than its assets, and that Ofcom should consider whether the Applicant can meet its broader liabilities towards all site providers rather than just the ability of the operator to meet liabilities towards Ofcom.
- 3.23 It is Ofcom's practice, when considering applications for Code powers, to focus on the ability of the applicants to cover claims from Highways Authorities for the cost of removing apparatus. This is consistent with Oftel's statement on the granting of Code powers,<sup>18</sup> and reflects the fact that Code operators are under an ongoing obligation, under Regulation 16 (Funds for Liabilities)<sup>19</sup> to set aside sufficient funds to cover liabilities towards the Highways Authorities
- 3.24 In this regard, and as explained in the December 2016 consultation, the Applicant has considered its duties and responsibilities with regard to compliance with Regulation 16 and has confirmed in a signed letter from its directors that it will put sufficient funds for liabilities in place, by way of a bond, before exercising Code powers. Ofcom understand that these funds would be ring-fenced and notes that the Applicant would be required to renew the bond on an annual basis in order to comply with Regulation 16. Any failure by the Applicant to set aside sufficient funds for liabilities in the future would entitle Ofcom, under section 113(4) of the Act, to suspend the Applicant's Code powers.
- 3.25 Notwithstanding the above, and in light of responses to the December 2016 Consultation, we have also considered whether, in this case, the Applicant will be able to meet any broader liabilities that it may incur as a result of the application of the Code. We note that, whilst the Applicant's accounts of 31 March 2016 show a loss, this does not necessarily mean that it will be unable to meet its future liabilities arising from the Code. The accounts explain that this loss is mainly due to the effect of depreciation charges on the passive network infrastructure assets transferred into the Applicant in 2012. Further, in those accounts, the Applicant's directors have explained that they are confident that the Applicant will have adequate resources to continue in operational existence for the foreseeable future. They explain that they have reached this view based upon the continued investment in working capital from the Applicant's shareholders (Vodafone and Telefonica),<sup>20</sup> together with the expected future profits and cash flows from the business.

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<sup>18</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0028/8578/ecc.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0028/8578/ecc.pdf)

<sup>19</sup> Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553) (as amended)

<sup>20</sup> The notes to the Applicant's financial statements explain that, under the contract that underpins the relationship between the Applicant and its parent companies, there are provisions wherein the parents give

- 3.26 In light of the above, Ofcom is satisfied that the Applicant will be able to meet its liabilities arising as a result of the application of the Code.

## Overall assessment

- 3.27 In addition to our consideration of the four factors discussed above in paragraph 2.13, we consider that our proposal would secure or further the performance of our statutory duties under sections 3 and 4 of the Act.
- 3.28 In particular, we consider that, if the Applicant's intended infrastructure plans through the use of Code powers are realised, it may contribute to the availability throughout the UK of a wider range of electronic communications services. We also believe that our proposal will encourage competition in the provision of electronic communications networks and services and associated facilities as well as encouraging investment and innovation.
- 3.29 The impact of implementing the proposal is likely to be low. Any costs to those affected by the Applicant's use of Code powers are likely to be outweighed by the benefits. On the other hand, the detrimental effect on the Applicant of a refusal to grant such powers (including to the practicability of its network roll-out) is likely to be significant. As noted in Section 2, we are also of the view that the impact of our proposal is not likely to be to the detriment of any protected group within society.

## Proposal

- 3.30 For these reasons, we propose that Ofcom should give a direction applying the Code to the Applicant. Ofcom does not propose to impose any geographic restrictions on the locations for which the Code will have effect, and so proposes that the Applicant's Code powers have effect throughout the United Kingdom, for the purposes of the provision by it of a system of conduits which it 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.

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financial support to the Applicant so that it can meet its liabilities as they fall due and sufficient committed loan funding to support foreseen investment and working capital requirements.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 22 May 2017**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://www.ofcom.org.uk/consultations-and-statements/category-3/proposal-to-apply-code-powers-to-CTIL>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a [response cover sheet](#) (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data please contact [numbering.information@ofcom.org.uk](mailto:numbering.information@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Numbering Team  
Ofcom  
4<sup>th</sup> Floor Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7981 3061
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

## Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Numbering Team on 020 7981 3000.

## Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.



- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

## Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in Summer 2017.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publication of relevant Ofcom documents. For more details, please see: [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

## Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Steve Gettings, Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [steve.gettings@ofcom.org.uk](mailto:steve.gettings@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

## Ofcom has seven principles that it follows for every public written consultation:

### Before the consultation

A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

### During the consultation

A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.

A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.

A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.

A2.6 If we are not able to follow any of these seven principles, we will explain why.

### After the consultation

A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore, Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 4

# Statutory notification

## Notification under section 107(6) of the Communications Act 2003

### Proposal to give a direction applying the electronic communications code

#### Proposal in this Notification

1. Ofcom hereby proposes, in accordance with section 107(6) of the Act, to give a direction under section 106(3) of the Act applying the Code to the Applicant: Cornerstone Telecommunications Infrastructure Limited.
2. The proposed direction applying the Code to the Applicant on the terms proposed is set out in the Schedule to this Notification.
3. Ofcom's reasons for giving the proposed direction are set out in the accompanying consultation document.

#### Ofcom's duties

4. In making this proposal, 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.

#### Making representations

5. Representations on this proposal may be made to: Numbering Team, Ofcom, 4<sup>th</sup> floor, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, by no later than 5pm on **22 May 2017**.

#### Interpretation

6. In this Notification—
  - (a) “**Act**” means the Communications Act 2003;
  - (b) “**Applicant**” means Cornerstone Telecommunications Infrastructure Limited, whose registered company number is 08087551;
  - (c) “**Code**” means the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (as amended); and
  - (d) “**Ofcom**” means the Office of Communications.
7. For the purpose of interpreting this Notification—
  - (a) headings and titles shall be disregarded; and

- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

8. The attached Schedule forms part of this Notification.

**Signed**

A handwritten signature in black ink, appearing to read 'Brian Potterill', with a long horizontal flourish extending to the right.

**Brian Potterill**  
**Competition Policy Director**

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

**21 April 2017**

## SCHEDULE

### **[Proposed] 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 24 March 2017.
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 21 April 2017, 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 **22 May 2017**.
6. [*Ofcom has considered every representation about the proposal made to it/Ofcom did not receive any representations about the proposal*]. For the reasons set out in the explanatory statement accompanying this Direction, 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**

7. 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 conduits which he 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.
8. This Direction shall take effect on the day it is published.

#### **Interpretation**

9. In this Direction—
  - (a) “**Act**” means the Communications Act 2003;

- (b) “**Applicant**” means Cornerstone Telecommunications Infrastructure Limited, whose registered company number is 08087551;
- (c) “**Code**” means the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (as amended);
- (d) “**Ofcom**” means the Office of Communications.

**10.** 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