

Direction under Section 106(3) of the Communications Act 2003 applying the electronic communications code in the case of Atlas Communications NI Limited

A Notification of this proposal was published on 18 May 2010

Whereas:

- (A) On 29 April 2010, Atlas Communications NI Limited (registered company number NI058005) made an application for the electronic communications code (the "Code") for the purposes of the provision of an electronic communications network in the United Kingdom in accordance with section 107(1) of the Communications Act 2003 (the 'Act') and the notification published by the Director General of Telecommunications under section 107(2) of the Act on 10 October 2003 setting out the requirements with respect to the content of an application for the electronic communications code and the manner in which such an application should be made;
- (B) By virtue of the Transitional Provisions, references to the Director in the Notification referred to paragraph A above should be read as references to Ofcom;
- (C) On 18 May 2010, Ofcom published a notification of their proposal to give a direction applying the Code to Atlas Communications NI Limited in accordance with section 107 of the Act;
- (D) Ofcom did not receive any representations in relation to the notification and draft Direction;
- (E) For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that they have acted in accordance with their relevant duties set out in sections 3, 4 and 107(4) of the Act

NOW, therefore, pursuant to section 106(3) of the Act, Ofcom make the following Direction-

1. The electronic communications code shall apply to Atlas Communications NI Limited for the purposes of the provision by Atlas Communications NI Limited of an electronic communications network to have effect in the United Kingdom.

Definitions and Interpretation

2. "Director General of Telecommunications" means the Director General of Telecommunications appointed under section 1 of the Telecommunications Act 1984; and
3. "Transitional Provisions" means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.
4. In this Direction, except in so far as the context otherwise requires, words and phrases shall have the same meaning as in the Act, headings and titles shall

be disregarded and expressions cognate with those referred to in this Direction shall be construed accordingly.

5. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
4. This Direction shall take effect on the day it is published.

Gareth Davies
Competition Policy Director

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

23 June 2010

Explanatory Statement

1.1 On 29 April 2010, Atlas Communications NI Limited ('Atlas') applied to Ofcom for a direction applying the electronic communications code (the "Code"). This application was made in accordance with section 107(1) of the Communications Act 2003 (the "Act") and meets the requirements for any such application for a Direction applying the Code, and the manner in which such an application has to be made, as set out in the Notification published by the Director General of Telecommunications on 10 October 2003 under section 107(2) of the Act. Ofcom assumed its functions in relation to the Code on 29 December 2003, and by virtue of transitional provisions in the Act, references to the Director General of Telecommunications in the Notification referred to in this paragraph should be read as references to Ofcom.

1.2 On 18 May 2010, Ofcom published a notification and draft Direction proposing to give Code powers to Atlas. Ofcom did not receive any representations in relation to its proposal. Ofcom therefore plans to proceed and give Code powers to Atlas as proposed.

1.3 In considering Atlas' application, Ofcom has acted in accordance with its relevant duties set out in sections 3 and 4 of the Act. In particular, Ofcom has considered its duty in section 3(1)(b) "to further the interests of consumers in relevant markets, where appropriate by promoting competition" and the first Community requirement set out in section 4(3)(a) to promote competition "in relation to the provision of electronic communications networks and services". In this case, amongst other things, Atlas provides voice and data services to private and public sector companies in Northern Ireland.

1.4 Ofcom has considered the application with regard to its duties set out in section 107(4) of the Act. Its views on the matters set out therein in relation to the application are set out below.

The benefit to the public of the electronic communications network by reference to which the Code is to be applied to the applicant

1.5 Atlas' existing duct and cable network extends to over 400km linking Belfast to communities across Northern Ireland with breakout points in Armagh, Omagh and Strabane, and Londonderry. It also has breakout points in a number of important business and commercial developments in the Belfast area. The network also has links internationally to Amsterdam, New York and the Republic of Ireland.

1.6 Atlas wishes to extend the present network and its goal is to bring high capacity network connectivity throughout Northern Ireland.

1.7 Atlas, through its subsidiary Bytel, offers a range of bandwidth intensive communications services suited to private and public sector companies. Furthermore, Atlas runs the network on an Open Access, carrier neutral basis. This means that other communications providers can utilise the Atlas network.

1.8 Ofcom is therefore of the view that the network is likely to benefit the public and increase competition in the provision of high bandwidth communications services in Northern Ireland.

The practicability of the provision of the network without the Code

1.9 As explained in paragraph 1.5, Atlas already has a widespread network in Northern Ireland. This network was installed, at least in part, with Code powers granted to Bytel Networks Limited. Atlas now owns the network and therefore needs Code powers.

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

1.10 As explained above, Atlas' network is run on an Open Access basis and therefore the network supports the sharing of electronic communications apparatus. For instance, Atlas is willing to provide dark fibre to other communications providers.

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

1.11 Bytel (the previous owner of the network) put in place funds for liabilities and set out the methodology that enabled it to calculate specified liabilities as defined in the Electronic Communications Code (Conditions and Restrictions) Regulations 2003. Atlas intends to submit a bond on a similar basis.