

## **Modification to 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 modification of the direction dated 10 March 2005 applying the Code to the Applicant (formerly National Transcommunications Limited).
- 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 8 January 2018.
- 3.** Prior to giving a decision under section 106(3) of the Act to modify the terms on which, by virtue of section 106(5), the Code is applied 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
- 4.** On 7 June 2018, Ofcom published, in accordance with section 107(6) of the Act, a notification of its proposal to give a direction to modify the terms on which the Code applies 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 6 July 2018.
- 5.** Ofcom has considered every representation about the proposal made to it. For the reasons set out in the explanatory statement accompanying this Direction, 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. In accordance with section 115(4A) of the Act Ofcom considers the modification is objectively justifiable and proportionate to what it is intended to achieve.

### **Decision**

- 6.** Ofcom hereby directs, in accordance with section 106 of the Act, that the terms on which the Code applies to the Applicant by virtue of section 106(5) under its existing direction from Ofcom, dated 10 March 2005, shall be modified so that-
  - (a)** in addition to the Code applying under section 106(4)(a) for the purposes of the provision by the Applicant of an electronic communications network;
  - (b)** the Code shall also apply for the purposes set out in section 106(4)(b), namely for the purposes of the provision by the Applicant of a system of infrastructure 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.
- 7.** This Direction shall take effect on the day it is published.

### **Interpretation**

- 8.** In this Direction —

- (a) **“Act”** means the Communications Act 2003;
- (b) **“Applicant”** means Arqiva Limited, whose registered company number is 2487597;
- (c) **“Code”** means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) **“Ofcom”** means the Office of Communications.

**9. 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

**25 September 2018**