

## **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 30 September 2020.
- 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 22 December 2020, 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 January 2021.
- 6.** Ofcom received one representation objecting to the proposal. The respondent's main concern was about the general regime governing Code powers, particularly the rights available to Code operators under the Act to deploy structures for electronic communications networks in public highways and the possible disruption associated with such street works.
- 7.** Having considered the objections to the proposal, Ofcom concluded that the response raised issues concerning Government policy relating to the rollout of advanced communications networks. In particular, Government policy underpinning the statutory framework which establishes the Code and the rights available to Code operators. Ofcom has no power to alter these policies or the statutory framework that sets out the Code. It is therefore unable to include consideration of the issues raised by the respondent as part of its assessment of the application.
- 8.** We also note that there are safeguards in place to minimise the disruptions associated with street works. Amongst others, further to the New Roads and Street Works Act 1991, an undertaker proposing to execute street works must give notice of the works to the highway authority. Highways authorities can also impose conditions to minimise disruption such as specifying the time of street works. In addition, where street works involve a road closure or certain temporary traffic restrictions, authorities normally publish a notice in a local newspaper under the Road Traffic Regulation Act.
- 9.** 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

10. 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.

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

## Interpretation

12. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means Exponential-e Limited, whose registered company number is 04499567;
- (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) “**Ofcom**” means the Office of Communications.

13. 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

9 March 2021