

**Direction under section 106(3) of the Communications Act 2003, made pursuant to section 115(4) of the Act ('The Direction') modifying a direction applying the electronic communications code**

**Background**

1. The telecommunications code set out in Schedule 2 to the Telecommunications Act 1984, applied to KCOM Group Limited (whose registered company number is 02150618) immediately before the coming into force of section 106 of the Act. Therefore, by virtue of the transitional provisions in paragraph 17(2) of Schedule 18 of the Act, KCOM Group Limited is treated as a person in whose case the Code applies by virtue of a direction given by Ofcom.
2. The Code applies to KCOM for the purposes of the provision by it of an electronic communications network; and a system of infrastructure 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. The application of the Code to KCOM is currently restricted to the Hull Area.
3. KCOM Group Limited has applied to Ofcom for their grant of Code powers to cover the rest of the United Kingdom and, for this purpose, has requested a modification of the terms on which the Code currently applies to it.
4. The date on which Ofcom received a completed application that meets the statutory requirements for an application for a direction applying the Code was 23 February 2023.
5. 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.
6. Prior to making a direction under section 106(3) of the Act to modify the terms of which Code powers apply 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.
7. On 27 March 2023, Ofcom published a notification in accordance with section 107(6) of the Act of its proposal to give a direction applying the Code to KCOM Group Limited on modified terms for the reasons set out in the consultation document accompanying that notification. That notification invited representations to Ofcom by no later than 5pm on 27 April 2023.
8. For the reasons set out in the explanatory statement accompanying the above mentioned notification, 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 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**

9. Ofcom hereby directs, in accordance with section 106 of the Act, that the terms on which the Code applies to KCOM Group Limited by virtue of the transitional provisions in paragraph 17(2) of Schedule 18 of the Act, shall be modified as follows—

- (a) the restriction of the application of the Code for the specified purposes on KCOM Group Limited to the Hull Area shall be removed; and
- (b) the application of the Code to KCOM Group Limited shall now have effect throughout the United Kingdom.

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

**Interpretation**

10. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (c) “**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**



**Brian Potterill**

**Director of Mobile Network Strategy**

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

5 May 2023