

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

Whereas:

- A. On 20 December 2006, Telewest Communications Group Limited ("TCGL") (registered company number 02514287) 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. On 22 February 2007 Ofcom published a notification of their proposal to give a Direction applying the Code to TCGL in accordance with section 107 of the Act;
- C. Ofcom have considered every representation made to them about the proposed Direction;
- D. 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 TCGL for the purposes of the provision by TCGL of an electronic communications network to have effect in the United Kingdom.

Definitions and Interpretation

2. 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.

3. 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

12th April 2007

Explanatory Statement

1.1 On 20 December 2006, Telewest Communications Group Limited ("TCGL") 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.

1.2 On 22 February 2007, Ofcom published a notification of its proposal to give a Direction applying the Code to TCGL in accordance with section 107 of the Act. Representations on the proposal were invited by 27 March 2007. Ofcom received a number of representations in relation to its proposal and these were considered when reaching the decision set out in this document.

1.3 In considering TCGL's 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".

1.4 On 3 March 2006, the businesses previously owned by ntl and Telewest ("the previous companies") merged to form the new company, which on 8 February 2007 changed its name to Virgin Media (any references to the Virgin Media Group hereafter are references to the new company), a subsidiary of which is TCGL. TCGL will run the consolidated UK-wide fibre backbone network of the Virgin Media Group.

1.5 In this case, amongst other things, TCGL's network will be used to support a range of services to customers and Ofcom considers that the merged network will further consumers' interests and promote competition in the provision of electronic communications network and services.

1.6 TCGL's network will support, amongst other things, the provision of a range of telephony, broadband, data and television services by companies in the Virgin Media Group to both residential and business customers. The network will provide further benefits in that the enlarged network will facilitate the interconnectivity of the previous companies separate networks and franchise areas and will therefore enable the provision of services more widely. TCGL's network also interconnects with other national and international telecommunications operators many of which are provided with core fibre and transmission services by companies in the Virgin Media Group. Any further development or maintenance of the network is likely to involve works on or under public highways therefore a lack of code powers would affect the ability to continue to provide uninterrupted services to the consumers.

1.7 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

1.8 As explained in paragraph 1.6, companies in the Virgin Media Group provide a range of telephony, broadband, data and television services to residential, business and wholesale customer groups. The Virgin Media Group has over 5 million residential customers and several thousand business customers dependant on the services provided over TCGL's network. TCGL already has an extensive optical fibre network covering the UK providing a fibre backbone thousands of kilometres long interconnecting all of the Virgin Media Group's franchise areas. The network also provides services to other national and international telecommunications operators who use the network to support the UK sections of their own European backbones carrying voice and IP traffic between UK, Europe and the USA. Code powers are essential to developing and maintaining the network to allow the continuation of uninterrupted services to end users in the event of equipment failure through the installation of temporary replacement equipment and other systems at short notice.

1.9 For these reasons, Ofcom believes that TCGL needs to be able to maintain the network as appropriate to ensure continuity of service.

The practicability of the provision of the network without the Code

1.10 TCGL's network relies upon a large number of property arrangements put in place over a number of years and generally on the understanding that the previous companies benefited from powers provided by the Code. Also, TCGL will run the Virgin Media Group's backbone network and, as such, will replace ntl National Networks Limited ("NNNL") who previously provided services to ntl. NNNL had powers under the Code. TCGL considers that it would be impractical for it to maintain and develop the network without code powers.

1.11 TCGL provides a number of services to a large number of consumers. A lack of code powers therefore would have a substantial impact of TCGL's ability to continue to provide uninterrupted network services to these consumers.

1.12 Any further development or extension of the network would be likely to involve works on or under public land, including roads, which would be subject to the delays which are inherent in adopting the full planning process. Such delays are an impediment not currently faced by the majority of TCGL's competitors, who have been granted code powers in respect of equivalent infrastructure.

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

1.13 In its application TCGL stated that although it does not offer wholesale sharing of its ducts, it does offer duct swapping arrangements and promotes competitive access to the capacity already available across the network.

1.14 In addition, as stated in paragraph 1.8, the network is also used to provide services to other telecommunications operators to support their own UK sections of their European backbones carrying voice and IP traffic between UK, Europe and the USA.

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

1.15 The previous companies already have funds for liabilities in place covering the network assets of TCGL. The Virgin Media Group considers that these existing securities should continue to be adequate to cover TCGL's backbone network.

1.16 TCGL proposes to put in place a similar third party performance guarantee to replace the current security held by NNNL when it expires or will consolidate it into the existing TCGL guarantee.

1.17 In its application TCGL states that over many years of developing and rolling out network infrastructure the Virgin Media Group has established a proven track record of compliance with the code and other regulatory obligations in the communications markets in which they operate.

1.18 For these reasons Ofcom is satisfied that such funds are available and will be renewed when required.