

**Direction under Section 106(3) of the Communications Act 2003 applying the electronic communications code in the case of Euro Payphone Ltd**

**A Notification of this proposal was published on 17 January 2006**

Whereas:

- (A) On 13 December 2005, Euro Payphone Ltd (registered company number NI20783) 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 17 January 2006, Ofcom published a notification of their proposal to give a direction applying the Code to Euro Payphone Ltd in accordance with section 107 of the Act;
- (C) Ofcom did not receive any representations in relation to 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 Euro Payphone Ltd for the purposes of the provision by Euro Payphone Ltd 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.

**Stephen Unger**  
**Director of Telecoms Technology, Competition Group**

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

**2 March 2006**

# Explanatory Statement

1.1 On 13 December 2005, Euro Payphone Ltd 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 17 January 2006, Ofcom published a notification of its proposal to give a direction applying the Code to Euro Payphone Ltd in accordance with section 107 of the Act. Representations on the proposal were invited by 22 February 2006. None were forthcoming.

1.3 In considering Euro Payphone Ltd’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”. In this case, amongst other things, Euro Payphone Ltd intends to expand its public call box network and to do so without Code powers would place Euro Payphone Ltd at a competitive disadvantage.

1.4 Euro Payphone Ltd provides managed or maintained payphone services located in various municipal buildings in Northern Ireland and in some privately owned establishments. For these, Euro Payphone Ltd does not require Code powers. However, the company has an agreement in place to take over a number of public call boxes from another public call box provider and these are situated on public land. The company also wishes to install additional public call boxes and has explained that to do so without Code powers would be impracticable. The primary purpose of these “payphones” will be to provide free access to local taxi cab providers. They will also allow free access to emergency call services.

1.5 In considering Euro Payphone Ltd’s application for Code powers, Ofcom had regard to its duties set out in section 107(4) of the Act. It has set out its views on the matters set out in section 107(4) of the Act in relation to the application below.

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

1.6 Euro Payphone Ltd’s network of public call boxes will, amongst other functions, provide access to dedicated freephone services. The company explained that its access services would be competing directly with other electronic communications service providers and to do so without Code powers would place it at a competitive disadvantage and would be impracticable. Others do benefit from Code powers.

1.7 The public call boxes will provide free access to public services such as licensed taxi cab providers and will also enable access to emergency call services. Both aspects have a public safety benefit and the application explained that the service has the support of the police and the tourist board.

## **The practicability of the provision of the network without the Code**

1.8 Euro Payphone Ltd considers that it would not be practicable for it to compete in the absence of Code powers. It suggested that it would be placed at a significant competitive disadvantage should it have to rely upon Town and Country Planning legislation. Permitted Development, as far as it relates to electronic communications apparatus, which in this case is set out in the Planning (General Development) (Amendment) Order (Northern Ireland) 2003, applies only to those electronic communications network operators who have been granted the Code.

1.9 Ofcom acknowledges that Euro Payphone Ltd would be likely to be placed at a significant disadvantage should it not benefit from Code powers whereas others do.

1.10 For these reasons, Ofcom considers that it should grant Code powers to Euro Payphone Ltd.

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

1.11 Euro Payphone Ltd has stated that it would be prepared to share electronic communications apparatus with others should it be practicable to do so and should it be able to reach acceptable terms for the commercial sharing of its apparatus. The company noted, however, that its apparatus is intended to supply a retail service and that the installation of public call boxes allowed limited scope for apparatus sharing.

1.12 Euro Payphone Ltd also explained in its application that it is fully aware of its obligations in terms of the restrictions and conditions that would apply should it be granted Code powers.

## **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**

1.13 Euro Payphone Ltd has explained that it is likely that some of its new installations would be placed on public highways and, therefore, it recognised that it would be required to put funds in place to meet any potential liabilities. Ofcom sought additional information from the company in relation to the form of the bond or guarantee that it would put in place should it be granted Code powers, and also on the methodology that it would use to calculate any potential liability. The further information supplied by Euro Payphone Ltd satisfied Ofcom that the company is aware of the obligations that it would be required to meet under Regulation 16 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003.