

**Direction under section 106(3) of the Act applying the Electronic  
Communications Code in the case of NewNet**

**A Notification of this proposal was published on 6 February 2004**

**Whereas:**

- (A) on 8 December 2003, NewNet made an application for the Code for the purposes of the provision of an electronic communications network in accordance with section 107(1) of the Act and the notification published by the Director on 10 October 2003 under section 107(2) of the Act setting out his requirements with respect to the content of an application for the Code and the manner in which such an application is to be made;
- (B) by virtue of the Transitional Provisions, references to the Director in the notification referred to in recital (A) above should be read as references to OFCOM;
- (C) on 6 February 2004, OFCOM published a notification of their proposal to give a direction applying the Code to NewNet in accordance with section 107 of the Act;
- (D) no representations were received by OFCOM about the proposed direction referred to in recital (C) above;
- (E) 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; and

**NOW, therefore, pursuant to section 106(3) of the Act, OFCOM make the following direction:**

1. The Code shall apply to NewNet for the purposes of the provision by NewNet of an electronic communications network to have effect in relation to the United Kingdom.

*Definitions and Interpretation*

2. In this Direction (and, for the avoidance of any doubt, in its recitals above), unless the contrary intention appears:

“**Act**” means the Communications Act 2003;

“**Code**” means the electronic communications code referred to in section 106 of the Act;

“**Director**” means the Director General of Telecommunications appointed under section 1 of the Telecommunications Act 1984;

**“NewNet”** means NewNet plc (whose registered company number is 3128506);

**“OFCOM”** means the Office of Communications; and

**“Transitional Provisions”** means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 (S.I. 2003 No. 1900 (C. 77)) and the Office of Communications Act 2002 (Commencement No. 3) and Communications Act 2003 (Commencement No. 2) Order 2003 (S.I. 2003 No. 3142 (C. 125)).

3. For the purpose of interpreting this Direction and its recitals:
  - (a) except in so far as the context otherwise requires, words or expressions shall have the same meaning assigned to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has in the Act;
  - (b) the Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament;
  - (c) headings and titles shall be disregarded; and
  - (d) expressions cognate with those referred to in this Direction shall be construed accordingly.

*Effective Date*

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

**Neil Buckley**  
**Head of Consumer Policy**

**17 March 2004**

## EXPLANATORY STATEMENT

1. On 8 December 2003, NewNet plc (“**NewNet**”) made an application for the electronic communications code (the “**Code**”) for the purposes of the provision of an electronic communications network. This was in accordance with section 107(1) of the Communications Act 2003 (the “**Act**”). In addition, NewNet’s application was made in accordance with the 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, as set out in a notification published by the Director of Telecommunications (the “**Director**”) on 10 October 2003 under section 107(2) of the Act.

2. OFCOM assumed their functions in relation to the Code on 29 December 2003, and, by virtue of transitional provisions in the Act, references to the Director in the notification referred to in paragraph 1 above should be read as references to OFCOM.

3. On 6 February 2004, OFCOM published a notification of their proposal to give a direction applying the Code to NewNet in accordance with section 107 of the Act. No representations were received by OFCOM about that proposed direction.

4. In considering Newnet’s application, OFCOM have acted in accordance with their relevant duties set out in sections 3 and 4 of the Act, in particular the duty in section 3 to further the interests of consumers in relevant markets, where appropriate by promoting competition, and the Community requirements to promote competition in the provision of electronic communications networks and services, and to promote the interests of European citizens. The direction applying the Code helps to promote competition by assisting NewNet in building out infrastructure to provide a wider range of electronic communications services, to the benefit of consumers. In considering NewNet’s application, OFCOM have also had regard to the factors set out below, in accordance with their duties under section 107(4) of the Act.

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

5. NewNet intends to provide an electronic communications network in the Portsmouth, Fareham and Southampton urban areas using fibre as the means of access in order to offer Internet Protocol (IP)-based communications solutions, such as broadband Internet connections and services.

6. OFCOM are of the view that the provision of such an electronic communications network may accelerate broadband service penetration in the United Kingdom and has the potential to enhance competition both at service and network level and maximize the use of existing fibre within the United Kingdom.

7. OFCOM consider that such an electronic communications network will have the least possible environmental effects; it will facilitate a broader coverage of broadband access in the United Kingdom, and thus a wider choice of services at competitive prices. OFCOM consider that any disruption will be likely to be of short term duration.

***The practicability of the provision of the network without the application of the code***

8. OFCOM consider that it will not be practicable for NewNet to provide its electronic communications network without the application of the Code. This is demonstrated in its application, where the outcome of NewNet's research in relation to the benefits that the application of the Code will bring to NewNet is set out.

9. OFCOM are of the view that a lack of code powers for NewNet would cause significant delays in terms of deploying its network at a competitive level, even though sharing of infrastructure is one of NewNet's intentions.

10. Such a delay can have a negative impact on the development of competition in the market and most importantly on consumer choice.

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

11. NewNet has provided evidence to OFCOM of its ability and willingness to share apparatus.

12. Based on the information provided, NewNet is willing to exercise diligence when installing apparatus. NewNet has stated that it intends to roll out its network wherever possible and practicable through sharing infrastructure and it set out specific measures and initiatives of doing so.

13. In addition, OFCOM believe that NewNet is fully aware of the environmental issues with respect to electronic communications apparatus. NewNet is willing to work closely with the relevant departments of the local authorities to present its network plan and discuss the processes for maintaining public highways and pedestrian access routes when street works take place. OFCOM believe that such an approach is not only a good example of co-operation at a local level, but also a good means of exploring alternative ways of, and arrangements for, providing services.

14. Based on the information provided, NewNet is willing to put in place procedures for responsible use of the Code before undertaking any network operations, which will cover issues such as responding to street works notices, customer connections and planned and emergency maintenance.

***Whether NewNet in whose case it is proposed to apply the code will be able to meet liabilities arising as a consequence of:***

- (i) the application of the code in his case; and***
- (ii) any conduct of his in relation to the matters with which the code deals***

15. OFCOM are of the view that NewNet in whose case it is proposed to apply the Code has provided sufficient evidence of its ability and willingness to meet potential liabilities. In particular, NewNet submitted a letter signed by a director certifying that it is going to put sufficient funds for liabilities in place before exercising Code powers.