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AP Wireless Response to Ofcom Consultation regarding the Digital Economy Act 2017: Proposed Code of Practice, Standard Terms of Agreement and Standard Notices

About AP Wireless ('APW')

1. We are the leading phone mast lease investment firm in the world. We focus on the acquisition and management of ground, tower, rooftop and in-building mobile phone mast leases and infrastructure.
2. The APW UK senior management team combines approximately 90 years of experience in the acquisition, estate management and development of digital communications infrastructure.
3. APW develops partnerships with existing mobile phone mast landlords, providing them with a lump-sum payment in exchange for the right to receive the future rent associated with the mobile phone mast on their property. AP Wireless seeks to add as many ECC beneficiaries to each site as possible, ensuring that all sites are managed to their greatest potential.
4. In 2010, AP Wireless began investing in mobile phone mast leases and has since expanded operations to 35 locations around the world. The company's investment portfolio is comprised of thousands of leases in 14 countries across Europe, Asia, Australia, and North and South America.
5. In the UK alone, we have invested over £60 million on behalf of our US-based equity investors Associated Partners LP and KKR & Co. LP.

APW's Investment Partners

1. **Associated Partners LP** is an investment and operating partnership that captures attractive opportunities in infrastructure, telecommunications, internet/media, and related technologies targeting long-term, risk-balanced returns within the accelerated pace of technological, industrial, regulatory and capital market changes. <http://www.associatedpartnerslp.com/>
2. **KKR & Co. LP** is a global investment firm that manages investments across multiple asset classes, including private equity, energy, infrastructure, real estate, credit strategies and hedge funds. As an investor with an industrialist vision, KKR aims to generate attractive investment returns by following a patient and disciplined approach, employing high-quality people, pursuing the highest standards of excellence, and aligning our interests with those of all our investment partners. <http://www.kkr.com/>

1. Do you have any comments in relation to the scope or drafting of the Code of Practice, as set out in Annexes 4 and 5?

- With regard to the scope of the Code of Practice, APW comments:

Whilst the EC Code itself omits to require operators to give landowners prior notification of upgrade works, the subject Code of Practice should take the opportunity to provide for this. Under the EC Code, operators have the right to carry out upgrade works that *inter alia* have ‘...no adverse impact or no more than a minimal adverse impact...’¹ on a site’s appearance. In the absence of prior notification of upgrade works, the Landowner has no opportunity to make his own assessment of the impact of the proposed works before they take place - this is likely to lead to post-upgrade disputes between landowners and operators.

We recommend that a new paragraph be inserted at an appropriate point in the Code of Practice which reads:

‘Upgrades

Operators have the power under the EC Code to upgrade their apparatus provided that the upgrade

- has no adverse impact (or no more than a minimal adverse impact) on the appearance of the apparatus and
- imposes no additional burden on the Landowner.

Operators should notify Landowners at least 28 days in advance of carrying out any proposed upgrade that will change the external appearance of a site, so that Landowners may make their own assessment as to whether the upgrade is likely to have these effects. The operator should provide sufficient detail of the proposed upgrade, for example specification drawings and plans, to allow the Landowner to make the necessary assessment. Where a Landowner feels that a proposed upgrade will have more than a minimal impact on appearance or impose an additional burden, he may advise the operator, who should consider the Landowner’s concerns and address them before the upgrade is carried out.’

¹Digital Economy Act 2017, Schedule 1 The electronic communications code Paragraph 17(2)

- With regard to paragraph 4.54, APW comments:

This paragraph should make it clear for the avoidance of doubt that the consideration described therein may be exercised by the Landowner at his sole discretion and that he is under no obligation to incorporate the communications apparatus in the redeveloped property. In practice many landlords may wish to incorporate the communications apparatus, for example to retain the right to receive any rent that may be paid.

2. Do you have any comments on the scope or drafting of the standard terms, as set out in Annex 6?

- With regard to the standard terms, APW comments:

The standard draft terms are rather basic and unlikely to be of use in all but the most simple of situations. Explanatory notes should be provided with the standard terms to make it clear to landowners that:

- they are provided for guidance only and that their use is not mandatory
- they will not be suitable in many situations and may need to be substantially modified to meet site specific circumstances
- whilst there is limited scope for their application they provide a potential starting point for operator/landowner discussions but no more.

Turning to specific aspects of the terms:

Clause 3 – Payment. This clause should provide scope for the review of payment arrangements including the review of the level of any rent paid, to be undertaken at periodic intervals and/or as a result of specified events. To avoid creating a review methodology that is novel (and thus introducing uncertainty) any stated rent review methodology should reflect mainstream commercial property management practice.

Clause 16 – Mediation. This clause should be drawn more broadly to provide a range of dispute resolution options, for example including arbitration or third party expert determination, from which the operator/landowner can choose the most appropriate.

3. Do you agree that OFCOM has identified all of the notices it is required to prepare under paragraph 89 of the New Code?

- With regard to notices, APW comments:

Whilst OFCOM may have identified all of the notices envisaged by the New Code, there should be a draft form of notice provided for use by operators when notifying landowners of a proposed upgrade reference our response to question 1.

4. Do you have any comments on the scope or drafting of these notices as set out in Annex 7?

- APW offers no comment in this regard.