

## **CLA response to Ofcom's consultation on the Electronic Communications Code**

### **Introduction**

1. The CLA represents 31,000 members across England and Wales who are farmers, landowners and rural businesses, all of which will have an intrinsic interest in the revisions to the Electronic Communications Code (ECC).
2. As stated in the consultation document the CLA was a member of the drafting group for the Code of Practice and our comments on the Code of Practice relate to the principles underpinning this document rather than the substantive text.

### **Overall objective of CLA policy**

3. The single aim of the CLA has always been the universal accessibility of broadband connectivity, irrespective of location. This remains our goal and we believe that the Universal Service Obligation (USO) can, if implemented effectively and transparently, achieve this objective.
4. However, it is still the case that, in order to allow the market to operate efficiently for the benefit of all, there needs to be put in place a series of measures that helps to simplify the process, thus making it easier for Code Operators and bringing certainty to site providers. As will be made clear in our response there are a number of significant developments which, we feel, will meet the aspirations of the industry.

### **The legal sanctions available to the Code of Practice**

5. The process through which the Code of Practice was drafted assumed that the Code would not have legal force. We believe that for any Code of Practice to have any credibility and legitimacy with the industry it should have the sanction of law. Therefore, we are disappointed the proposed Code of Practice will not have the force of law. It is clear that voluntary codes of practice are not enforced properly, much to the detriment of one or other of the parties involved.
6. However, it should be stressed that in the event that the Code of Practice being part of a lease between a site provider (landowner) and an infrastructure provider or Mobile Network Operator, given that the lease is a legal contract, the attached Code of Practice would also have legal effect and that either party could rely on its provisions.

### **The valuation system under the Electronic Communications Code (ECC)**

7. It is generally regarded that the Digital Economy Bill, as originally drafted, significantly altered the terms of the valuation of a lease between the landowner and the infrastructure provider. This was set out under paragraphs 23 and 24 of the revised ECC.
8. However, it is important to stress that these two paragraphs were amended during the Parliamentary process and before the Bill gained Royal Assent. Now it is widely agreed that the valuation system as previously constituted and having as its central provision the use of open market value remains in situ. Although the value of the land is now based on the value to the landowner and not to the Mobile Network Provider, there are a series of additional factors that will be taken into account during the setting of the site payment, one of the most important being the granting of access rights.

9. However, the scale and effect is not likely to be significant as originally thought as it is now clear that the basis for a site payment will remain that of open market value. Furthermore, the additional factors prefaced above will need to be taken into account during the negotiation of the site payment. This will include access arrangements. In the event of a mast being shared between Code Operators, the access payments will inevitably increase. However, this is a direct result of a free market and is not the result of changes to the ECC.

### **The importance of industry consensus**

10. The CLA believes that the role and activity of the industry has to take precedence over that of the Government as well as Ofcom. Of course, the Digital Economy Act (DEA) confers a series of additional powers on Ofcom which we welcome. However, the CLA is of the view that it would be unwise for these powers to be extended. In a market that is constantly changing it is far more practicable for the industry to take the lead.

### **A standard template approach**

11. This relates to the series of notices that have been proposed by Ofcom as part of the consultation. It is important for Ofcom to be aware of recent developments that have taken place and are ongoing within the industry so that the future regulatory framework adopted by Ofcom meets the needs of the various industry players. Following the same process that was used in developing the draft Code of Practice, a working group of mobile infrastructure providers and landowner representatives have been in discussions in developing a standard template for greenfield leases. The objective of the working group is to simplify the current relationship between site providers and Code Operators in the rollout of mobile infrastructure, a central government requirement and enshrined in the DEA. The discussions will aim to have in place an industry agreed template by the time of the implementation of the revised ECC.

### **Fixed line rural land agreements**

12. In addition the CLA and the NFU have started negotiations on a new rural land agreement covering the issue of wayleaves for fixed line communications. The aim of this agreement is to provide certainty in the market place. However, it is unlikely that the agreement will set defined valuation rates although this is permitted under the Second Reasoned Opinion from the former Office of Fair Trading.<sup>1</sup> Our belief is that there remains a strong argument that such rates should be set as a result of market activity.

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<sup>1</sup> OFT Reasoned Opinion

[http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared\\_offt/SFOs/wa/leave.pdf](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.offt.gov.uk/shared_offt/SFOs/wa/leave.pdf)

## **Concluding remarks**

13. The CLA's telecommunications policy, developed over the last 15 years, is predicated on the objectives of universal connectivity and simplicity. We are fully recognisant of the needs of both Code Operators, whether they be fixed or mobile, and site providers and landowners. What we are trying to achieve is an equitable balance, one that also meets the needs of Government and Ofcom and the industry. We fully accept that the policy framework and the actions of the industry cannot operate in a vacuum and we believe that the actions currently being undertaken, in terms of both fixed and mobile communications can at last resolve the problems that have been faced in the past, achieve the right balance and meet the ultimate objective of universal connectivity.

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