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24th March 2021

Access to land: consultation on changes to the Electronic Communications Code

The Ulster Farmers' Union (UFU) is the largest farming organisation in Northern Ireland representing approximately 11,500 farming families. The UFU represents farmers from all areas of Northern Ireland, across all sectors and has a vision of a productive, profitable and progressive farming sector. UFU recognise the importance of improving connectivity across the UK, particularly in rural areas where connectivity is much poorer than urban areas. COVID-19, increased the reliance on digital services and the issues associated with poor connectivity were clearly evident. However whilst improving connectivity is of great importance, it should not come at a cost to farm businesses and land owners. Landowners and farm businesses have key resources to assist with improving connectivity and must be treated fairly in the process.

Obtaining and using code agreements
General questions

Question 1 -Do you agree with the assessment of the main problems relating to negotiations for and the completion of new agreements set out in Chapter Two?

The UFU are in agreement with the main problems stated that frequently occur between operators and occupiers when agreeing new or existing leases. However, also add that the tactics employed by operators has been damaging to negotiations process. The treatment of occupiers by operators has been poor and unprofessional. News of this has spread through word of mouth and media, making occupiers resistant to engage with the operators.

Occupiers do not trust operators to deliver a fair deal. Given the profits of telecommunication companies, occupiers feel their business takes a hit to speed up connectivity whilst providers enjoy the profits.

Reforms to the Codes valuation process and the reduction in the amounts paid to site providers coupled with the treatment from operators makes the thought of entering into a long term agreement very unfavorable.

Question 2 - Do you have any suggestions of other legislative or non-legislative changes that might support faster and more collaborative negotiations other than those discussed in Chapter Two? In answering this, please note that we do not intend to revisit the statutory valuation regime.

The changes suggested in Chapter 2 have potential to improve occupier experience during the negotiations process. An effective change would be making Ofcome Code of Practice enforceable. There must be penalties introduced for operators who do not follow the Code of Practice throughout the negotiations process.

Compliance with the Ofcom Code of Practice

Question 3 -Do you think there should be a statutory process available to look at cases where an operator has failed to comply with the Ofcom Code of Practice?

Yes, improved compliance with the Code of Practice is necessary and could be facilitated through a statutory process

If such a process was introduced:

Question 3(a) -Do you think that the process should deal with any failure to comply, or exclude minor or technical breaches, or focus on a specific range of issues?

The process should deal with any failure to comply. UFU members have reported appalling treatment from operators. One UFU member was told by an agent that he should accept this rent offered as his business had suffered a loss as a result of COVID-19, so should accept whatever money he could get. This condescending behavior has continued unchallenged as the OfCom Code of Practice does not hold operators accountable.

Question 3 (b) -Do you think the Ofcom Code of Practice would need to be reviewed to provide more specific guidelines? If so, what might these helpfully include?

No, the Code of Practice is fit for purpose as it is. The main problem is that site providers are not aware of the Code of Practice that operators should adhere to and it is not enforceable.

Question 3(c) -What remedies do you think should be available under any statutory process? For example: should these be limited to putting right the failure to comply, or should financial penalties be available in some circumstances?

Operators should correct any non- compliance and pay a financial penalty/ compensation to the occupier for the wrong they have done for repeated and serious breaches.

Financial penalties should not apply to site providers since they may not be familiar with the Code of Practice, as it is not their main area of business. Even where they are aware of the Code of Practice, they may not understand what constitutes a breach. In addition, given the considerable reduction in rent, site owners have already been disadvantaged enough without the possibility of a penalty for not adhering to a code that does not apply to their primary business or source of income.

Question 4 -Do you think the court should have specific jurisdiction to take into account failures to comply with the Ofcom Code of Practice during the negotiation stage? For example, in awarding costs or providing some other remedy?

Yes, but the court will need to consider that a site provider may not be familiar with the Code of Practice or what constitutes a breach of it, as most site providers in NI are small business not related to telecoms. Furthermore, a breach by a site provider may be caused by unsatisfactory behaviour by the operator. It would not be fair to penalise a site provider who has been placed in an often stressful situation not by choice.

If the court had this jurisdiction:

Question 4(a) -What should be the purpose of such a process? Should the court's main aim be to ensure that parties comply with the terms of agreements? Or should it aim to punish breaches already made and to deter future breaches?

It should it aim to punish breaches already made and set an example to deter future breaches.

<u>Alternative Dispute Resolution</u>

Question 5 -Do you think Alternative Dispute Resolution (ADR) would assist in resolving disagreements where e.g. the disputes points are not related to legal interpretation?

Yes in certain cases there is opportunity for ADR to resolve disagreement.

If so:

Question 5(a) -What sort of situations do you think might be suitable for bringing to ADR?

Typical disputes would include valuation and the level of impact due to upgrading or sharing of apparatus on a site provider. It could also include the extent of the rights sought such as areas required by an operator in excess of the site used for the primary apparatus such as set down areas, access routes, damage to property etc.

Question 5(b) -Which type or types of ADR (e.g. mediation, arbitration, other) do you think could be best suited for each of these situations?

The method or ADR would be dependent on the situation, a variety of ADR should be available. Any form of ADR should be a quicker and cheaper alternative to court.

Question 6 -If an ADR scheme was introduced do you have any comments on how ADR should work in practice?

Each party in an ADR process should initially pay its own share of the costs of the process . Other forms of ADR such as arbitration may require the adjudicator or arbitrator to award costs in the usual

way.Both occupiers and site operators should have consent to use ADR, however both parties must be in agreement with the method used or else it should not be used at all.

Ideally, parties should be required to consider / attempt some form of ADR before bringing a case before the court. Evidence as to why ADR was not considered appropriate should be required should a case pass through the courts.

Fast track judicial process

Question 7 -Do you think there are situations where a fast track application to a court should be available, bearing in mind the implications of this in terms of judicial resources and the listing of other cases?

The UFU can see the benefits of fast tracking applications to court however there is a danger that this may be used as a tactic to bypass genuine but perhaps arduous negotiations which would have resulted in consensual agreement but for the ability to fast track. A site provider would likely never wish to fast track an application making it susception to abuse by operators in order to get quick decision. Again site providers in NI are usually small – medium sized family businesses, the cost of resistance in going to court for a site provider is often too great and may lead to them being pushed into a corner and forced to agree unfavourable terms.

If so:

Question 7(a) -In what situations do you think a fast-track procedure should be available and why?
The only situation in which a fast-track procedure should apply is where a case is urgent there is substantial evidence to support this. An urgent case would not be due something being overlooked or forgotten by an operator. Fast tracking applications should be a last resort and operators would need to show that negotiations have failed and why they have failed.

Question 7(b) -Should such cases be dealt with by the Upper Tribunal or by a different court/tribunal, for example, the First-tier Tribunal?
Question 7(c) -What time limits would be required for a fast track procedure to address difficulties with the current timescales for hearings and how do we ensure these provide sufficient opportunity for each party to respond?

Question 7(d) -Do you think any additional remedies would need to be available to the court in the situations you describe?

Question 7(e) -How can we ensure that any fast track procedures give priority to the most appropriate cases?

<u>Failures to respond to requests for Code rights</u>

Question 8 -Do you think our assessment of the impact of non- responsive occupiers and landowners on network deployment is accurate? Please provide any available evidence

demonstrating the impact of failures to respond on the pace, scale and cost of deployment as well as any other impacts.

The UFU has not had any reports that inability to identify and contact landowners is a problem that is delaying improving connectivity. It is perhaps more of an issue in an urban setting where property ownership can be sometimes complex with absentee freeholders. It is therefore important to distinguish between uncontactable landowners and unresponsive landowners in rural areas.

In addition, occupiers have been subject to significant reduction in the rent they receive from operators. For many rent from the site formed a valuable financial contribution to either their business or personal income. Whilst this consultation does not address the valuation framework contained in the ECC, it must be noted that the Code has greatly favored operators and is causing substantial changes to occupiers income. Due to nature of the changes it is understandable that occupiers are reluctant to engage in the renewing leases however it does not necessarily mean they are non-responsive. Whilst UFU appreciate the Code wants agreements to be finalized quickly consideration must be given to the changes occupiers need to make .

Question 9 -Do you think there are any other ways that we can encourage unresponsive occupiers and landowners to engage with requests for Code rights (further to those already included in the Telecommunications Infrastructure (Leasehold Property) Bill?

In some cases, the UFU is aware that landowners have delayed or refused to respond due to the manner in which they are initially approached by an operator. We have had reports from some members that they feel insulted by what is offered or that the approach has been aggressive. Both of these approaches give rise site providers being reluctant to deal with operators as the landowner does not wish to have to endure the burden of a site for such meagre consideration and with hostile tenant.

A more professional and respectful approach including guidance to landowners by operators may assist a more forthcoming response. Once again, landowners do not have the same knowledge of the code that operators do. Guidance would help explain the rights of both parties and develop a better understanding. Operators are too quick to threaten court action and should refrain from using this tactic as it is hostile and does not support an amicable negotiations process.

Occupiers could also be given an adjustment period, to redistribute finances within their business to account for the loss of income for the site due to the Code. This may make the process easier and also encourage landowners to engage with Code rights

Question 10 -Do you think there should be a streamlined process for operators to secure Code rights in cases where an occupier (or other relevant party) fails to respond to a request for these rights?

No, every site and occupiers situation is different. Failure to agree terms of an agreement by a landowner is not necessarily a failure to respond even to repeated requests for Code rights. Operators often refuse to alter or negotiate terms of a lease served on a landowner despite the

landowner trying to engage. Failure to agree terms must not be taken to be non-respondent even where a site provider fails to communicate having previously tried to negotiate.

Operators would need to demonstrate that they have applied due diligence in attempting to find a land owner and have expended all possible measures. If not, it could be open to abuse by operators to avoid negotiation where the landowner's requests are genuine and reasonable but do not fit in with the operator's plan. Alternatively, operators could fast-track cases in which negotiations are happening albeit it slowly.

If so:

Question 10(a) -Do you think this kind of streamlined process should be administered by the Upper Tribunal or by a different court?

No – costly for individual occupiers.

Question 10(b) What sort of timescales do you think would be appropriate for this kind of process?

There are already timescales in place whereby an operator can apply to the Tribunal to impose an agreement. The UFU cannot see why more rights are required as unless of course the time limit for this process be significantly reduced from 28 days which would be very unreasonable.

Site providers in NI are usually small to medium sized business not related to telecoms so are not knowledgeable in telecoms law. For farmers, a notice served on a site provider at certain times of the year may go undealt with for a period of time. Silage, harvest, lambing calving etc are a good examples of this and are periods where farmers often work long days and nights. 28 days is too short anyway taking the above examples into account, and anything less than 28 days would be extremely unreasonable.

Operators should know well in advance where they intend to deploy apparatus. The onus is on them make contact with site providers in good time. A site provider will not be familiar with the legislation and will need time to acquire professional advice and consider the impact of hosting apparatus on his land. There is no generic timescale than can be applied when seeking legal and professional advice and the time is takes is out of the landowners hands.

Question 10(c) -What kind of measures and safeguards do you think such a process would need to include in order to maintain a balance between the public interest in network deployment, and the private rights of occupiers and landowners? (for example, - how many times, and at what intervals, should the operator have to request the rights before they can access the procedure; how long should the occupier have to respond etc).

Protections to include would be to show that operators to provide evidence that they have made all reasonable attempts at trying to find the identity of a site provider. It should not merely be based on sending written correspondence at certain intervals throughout a certain period. A variety of methods

such as letters, emails, phone calls, site visits should be used before declaring that an site provider is non responsive.

Who confers Code rights where an operator is in occupation of a site.

Question 11 -Do you agree that if a Code operator is in occupation of land, it should be:

The person who owns or has control over the land; to which the agreement is subject who is the only person to grant Code rights. If it is anyone else, the landowner will be bound by something over which he has no control. No consideration would be taken into account of future uses of the land such as redevelopment plans etc. An example of this could be where roll out of 5G requires an increase burden on the lines of sight an operator requires which then has an impact on use or development of the land surrounding a mobile mast compound.

If an operator is in occupation of a site under an expired old Code agreement, they could only grant a lease to another operator for the same term and rights. To enable an operator to grant rights over and above what they enjoy would be contrary to basic legal principles. An operator in occupation of a site under an old Code agreement should not be able to grant Code rights.

A risk of allowing an operator in occupation of a site to grant Code rights to another operator would be that the original operator allows modifications to be made to the agreement with the new operator without any form of negotiation with the site provider.

Question 12 - Are there any other situations where you think it may be appropriate for someone other than (or in addition to) the occupier of land to be able grant Code rights?

No

Compliance with agreements

Question 13- Are you aware of, or have you experienced, any difficulties relating to compliance with the terms of a Code agreement?

If so:

Question 13(a) - Was paragraph 93 - or any other provision - of the Code the cause of those difficulties?
Question 13(b) - How were those difficulties dealt with and was the outcome satisfactory?
Few agreements have been made under the Code and those that have, have not been agreed long enough to become problematic.

Under the old Code there were many issues with operator non-compliance. These include delays in paying rent, delays, for damaging land, not rectifying any damage caused to land whilst carrying out

operations on the land, accessing land without permission, littering, unauthorised sharing of apparatus, trespass, biosecurity breaches and failure to give notice to land owners of access required for routine works. These problems may appear insignificant to operators and government, however it is a real annoyance for farmers that they should not have to endure.

Non-compliance undermines what could be a good landlord / tenant relationships. Site providers have reported that such behaviours have been overlooked because levels of rent were reasonable. Now that rent is much lower than previously, site providers are unwilling to tolerate any non-compliance big or small.

Question 14 - Are there other ways that you think we can encourage compliance with the terms of Code agreements?

Alternative Dispute Resolution could provide a route for dealing with compliance issues. There should there be scope for Code agreements to include financial penalties for noncompliance.

Breaches to do with access and damage are usually the fault of contractors working on behalf of operators. Often the responsibility will be passed back and forth from operator to contractor, with no one willing to take responsibility or rectify the problem. If operators have adequate processes in place to deal with contractor non-compliance there is potential for fewer breaches. Site providers should be able to claim compensation for these damages as an automatic right for the site provider in accordance with the Code.

A section could be added to the Ofcom Code of Practice meaning that non-compliance with Code agreements becomes a non-compliance of the Code of Practice and could attract a penalty. This of course must be enforceable

There should be opportunity for Code agreements to include financial penalties for non-compliance but these should only be in the case of operator non-compliance, not site provider as It would be unfair to financially penalise a site provider who is unlikely to be familiar with the law or terms of the contract and who under the Code is receiving less rent for an agreement they cannot get out of and do not necessarily want to be a part of

<u>Modifying agreements</u>

Question 15 - Do you think that operators and site providers should be able to ask a court to impose new, additional or modified rights or terms after an agreement has been concluded, but before it expires?

The UFU strongly oppose a mechanism whereby operators should be given a means to ask a court to impose new additional or modified rights or terms after an agreement has been concluded but before it expires.

Although the consultation states that it should not be possible for a party to re-open an agreement to secure more favourable financial terms, given the actions of operators landowner are likely to believe that this is the motivation. A request for such modification could be added on to a request for some other required modification. In other words operators may get around modifications that a court may reject ordinarily by applying for a number of modifications in one go.

To apply to a court is costly, the threat of which is worrying site provider who is in receipt of very little consideration under a Code agreement. The cost of defending an operator request to the court would outweigh any benefit derived by a site provider, even where the defence was successful. Operators may therefore use any provision to modify terms as an unfair negotiation tactic.

As professionals, operators should know what terms and equipment is required at a specific site to provide coverage when initially negotiating an agreement. An inexperienced site provider on the other hand may not have such certainty as to how hosting an electronic communications site may affect him or the way in which he is then able to use his land. If an ability to apply to a court to modify an agreement as described above were to be provided for, it should be in favour of site providers only. If operators wish to modify an agreement they should have to negotiate this with the site provider, rather than it be imposed by the court.

Modifying agreements in any form whether described under this particular section of the consultation or subsequent sections goes against the fundamental principles of offer and acceptance contained within contract law. Offer and acceptance are required to reach agreement and agreement is key to conferral of Code rights.

If this was permitted:

Question 15(a) - Do you think the circumstances in which this option is available to site providers and operators should be limited to maintain an appropriate balance between the need for certainty and allowing a degree of flexibility? For example: should this option only be available where an operator needs an additional right to those contained in the original agreement.

Question 15(b) - In deciding whether to impose additional, new or modified rights or terms, should a court apply a similar test to the one in paragraph 21, as used in relation to requests for new Code agreements? How (if at all) should this test be modified in this context?

It is likely that only operators would use this option. The option, if at all, should only be available to site providers.

Question 15(c) - Should a court take other, or additional factors into account in deciding whether to grant any new or additional Code right sought by a party?

The UFU strongly oppose granting operators the ability to apply for additional rights. Given the Code already favurs operators, why would operator needs rights that could have been negotiated at the outset?

Question 15(d) - If a court were to decide to impose a new or additional Code right, should the terms be based on the existing Code framework, or should additional / other factors be taken into account?

As above, the UFU strongly oppose imposing additional rights for operators on site providers.

Question 15(e) - If a court were to decide to impose new or additional Code rights, should the calculation of any consideration or compensation payable be based on the existing provisions, or on a different basis?

The calculation of consideration or compensation would need to be based on the level of rights given over and above what had previously been negotiated. Rights imposed which are not based on the existing Code framework but on other factors would need to be valued in a different way to paragraph 24.

<u>Rights to upgrade and share apparatus</u>

The automatic right conditions

Question 16 - In what circumstances do you think automatic rights to upgrade and share should be available?

Under no circumstance. Site owners / occupiers must always be consulted.

Question 17 - Do you think the current conditions relating to the paragraph 17 automatic rights should be amended?
If so:

Question 17(a) - What changes could we make to paragraph 17 that would make the practical application of the automatic rights clearer for operators and site providers?

Question 17(b) - Are there any additional measures we could include to protect the interests and address the concerns of site providers in relation to the automatic rights to upgrade and share? (For example: the introduction of notice requirements, or specific confirmation that automatic rights to upgrade and share are subject to the original terms of the agreement as they relate to notice / access requirements).

The UFU believe that upgrading and sharing should not occur without informing the site provider. On a practical level this is mainly so that a site provider has knowledge as to who may have access to his land.

In some circumstances upgrading and sharing will not have any impact at all on a site provider, on others such as mobile sites upgrading and sharing it can have more of an impact. Operators cannot assume whether or not it will impact a site provider and what that impact will be especially as such sites can differ vastly, therefore site providers must be notified.

Rights to upgrade and share apparatus

Rights to upgrade and share separate to the automatic rights

Question 18 - Do you think that a court should be able to impose rights that allow more extensive upgrading and sharing than is permitted under the automatic rights in paragraph 17 in any, or all, of the following situations:
(d) If the court is imposing a new agreement and such rights are requested?
(e) If the court is imposing a renewal agreement and such rights are requested? (f) If the court is asked to grant new or modified rights to upgrade and share
apparatus during the term of a completed agreement? (noting that this would only be relevant if changes permitting modification of an agreement prior to expiry is introduced, and would be subject to any safeguards put in place for such modifications).

Due to the way in which rent for a site is calculated, the court should not be able to impose more extensive rights for upgrading and sharing. Upgrades and sharing are unlikely to increase physical areas of land used but will inevitably have a bigger impact on a site provider due to more access being taken by different operator, more contractors on site and more intrusive visual impact.

Question 19 - Do you think the court's jurisdiction to impose these rights needs to be expressly stated in the legislation, given that the Upper Tribunal has already held that this is possible?

The UFU oppose the notion that extensive rights should be imposed either by a court or through legislation however, if unavoidable preference would be given to a court to determine rather than legislation, as it should better meet the needs of specific cases.

Question 20 - Do you think the court should be required to take specific factors into account in deciding whether it is appropriate to allow upgrading and sharing rights which are more extensive than those allowed by paragraph 17?

The UFU do not believe that more extensive rights should be imposed either by a court or through legislation.

Question 21 - Do you think the court should be required to take any specific factors into account in deciding what the terms relating to upgrading and sharing rights should be?

The court should do this to retain an aspect of control on operators.

Question 22 - What additional factors (if any) should be included in the situations described at questions 20 and 21 to strike an appropriate balance between the importance of upgrading and sharing and the potential impacts on the site provider?

Operators must have a genuine need for the rights requested. If it is mid-way through an agreement term, why the operator did not request the right before the agreement started? This should prevent operators requesting minimal rights initially to ease the acquirement of the initial agreement but who had already planned to apply for further more intrusive rights.

The impact any more extensive rights will have on the site provider and his own use of the land and any shared areas such as access tracks etc must be taken into account. Impact on future use of the land by the site provider and interference by operator access must be considered.

Rights to upgrade and share apparatus

Question 23 - What would be the specific impacts of creating an automatic right to upgrade and share apparatus in relation to agreements completed before 28 December 2017? Please provide details of all impacts including those on site providers, on coverage and connectivity, and on wider public considerations (such as reducing any disruption from unnecessary works or the impact on the environment of additional installations).

Question 24 - Do you think operators should have any automatic rights to upgrade and share apparatus relating to agreements completed before the 2017 reforms came into effect, where there is a strong case that this would be in the wider public interest and there would be no, or very little, impact on the site provider?

The UFU strongly objects to the notion that retrospective rights to upgrade and share apparatus be applied to pre 2017 agreements. This goes against the fundamental principles of contract law where parties are supposed to negotiate on an equal basis. Introducing new rights will also affect the valuation of a site under the old Code.

Upgrading and sharing are not new ideas in the telecommunications industry and so should have been anticipated and catered for by operators at the outset. Many of these agreements for mobile sites already have clauses in them allowing for upgrading and sharing subject to increased levels of consideration. Since most of these sites should be able to upgrade and share by virtue of the agreement in place, there would not be a case to argue for public benefit.

If these rights were introduced:

Question 24(a) - Do you think they should be subject to the same conditions as the paragraph 17 automatic rights, or should a different and more stringent set of conditions apply to protect site provider interests?If you think different conditions should apply, what might those conditions be?

These retrospective rights must not be introduced.

Question 24(b) - Are there any other measures we could introduce that would secure the benefits of upgrading and sharing apparatus installed under pre-December 2017 agreements, while protecting the interests of site providers?

The majority of operators for mobile should already be able upgrade and share apparatus by virtue of pre 2017 agreements agreed with site providers.

Expired agreements

Question 25 - Do you agree that the Part 5 provisions should apply to all agreements once the original term of the agreements expires or has expired? Is there any reason why they shouldn't?

The UFU does not agree that Part 5 provisions should apply to all agreements once the original term of the agreements expires or has expired. The relevant legislation under which agreements were initially agreed should apply. Site providers and operators alike are then obliged to follow the renewal process under which they agreed their initial agreements.

It is easy to identify which renewal process applies to an agreement so there should not be any misunderstanding. Under the old Code or the ECC, most agreements provide for the terms of the agreement to continue after expiry until termination or renewal. There is little risk to the operator being forced to leave the site due to expiry of an agreement since they will usually have the right to renew or roll on the agreement terms periodically even under the Business Tenancies Order in NI. It is already very difficult for a site provider to terminate an agreement where an operator wishes it to continue.

If Part 5 provisions are applied to all expired agreements:

Question 25(a)- Do you think any special provisions should be included for agreements that were previously subject to different statutory regimes to ensure that any protections are preserved (where these do not conflict with the framework of the Code)?

Agreements previously subject to different statutory regimes should be dealt with under those regimes and not Part 5 as explained above.

Question 26 - Do you think there are any circumstances in which it would be more appropriate for an operator to use the Part 4 (new agreement) process to obtain a new agreement, rather than the Part 5 (renewal agreement) process?

Operators may want to end a previous agreement and begin the process for obtaining a new agreement. However for the operator this could risk having a period when they cannot operate or even have to consider removing apparatus. Operators can however negotiate with site providers to prevent this from happening.

Question 27- Do you think that there should be a statutory requirement for disputes relating to the modification of an expired agreement to be heard within six months of the date the application is made?

There is potential benefit of having a time limit in which a court must hear a dispute relating to modification of an expired agreement, the UFU does not believe that a time limit should apply,

especially one of 6 months. It would be extremely onerous for site provider, whose primary business/ occupation is not telecoms to spend time away from his usual business dealing with this at a time which may be very inconvenient. Unlike site providers, operators on the other hand have the necessary expertise and resources already in place. 6 months is far too short for a site provider to be able to deal with the process from start to finish as they are likely to have many other things to focus on.

In addition, by applying a 6 month time limit, it may dilute an operators efforts to agree an agreement if that an agreement will be imposed within 6 months anyways.

Question 28- Do you think that there should be a statutory requirement for disputes relating to the termination of a Code agreement to be heard within six months of the date the application is made?
Please see answer to question 27

If so:

Question 28(a) - What would be the benefits of a statutory time limit in relation to these disputes being introduced?

Question 28(b) - What might be the drawback of a statutory time limit in relation to these disputes?
Please see 27 and 28 above.

Question 29 - Do you think operators and site providers should be able to seek interim orders in relation to renewal agreements?
There should not be an ability for parties to seek interim orders relating to renewal agreements, it is not guaranteed that the terms of the interim order and the renewed agreement will be the same.

If the terms of the interim order were not the same, how would the party with poorer terms in the interim order be compensated for having to endure a period under these terms?

If so:

Question 29(a) - What should the interim agreements cover (Code rights, pricing, etc)?

Interim rights should not be an option.

Question 29(b) - Are any safeguards necessary to prevent abuse of the process?

Question 30 - Do you think a court should be able to backdate the financial terms of a renewal agreement to the date that a request for an interim order is made?

The court should not be able to backdate financial terms to the date of request for an interim order. If this becomes available it is likely operators will use this tool as an automatic process in every case and cause unnecessary cost to the site provider in having to respond.

Question 31 - Are there any other ways you think we can help ensure that negotiations for renewals are dealt with in a timely and collaborative manner?

Finally, this consultation seems to focus on granting more rights to operators , over and above what was agreed just over three years ago. The problems with the ECC, most notably how operators have treated site providers has been evident to the UFU. There is little consideration given to how to improve the experience for site providers, who hold a valuable resource – the land. The site providers voice must be heard and considered by government, as the balance of power already falls to the operators and should not be increased.

If you have any questions please do not hesitate to get in contact.

Yours Sincerely,

David Brown
UFU Deputy President