# The New Code Valuation regime- a look back

The New Code valuation regime is clearly causing confusion
but what if we compare it to the “old valuation regime”. Is it so different? Consider this:-

The market value in this niche market was, prior to the New Code being enacted, operating for over 2 decades. The majority of legal agreements reached in that time restricted or excluded the rights to sublet, share and upgrade apparatus outside the cabin. Some even restricted the frequencies – either to 2G and 3G or to the actual operating frequencies and the rights to assign were excluded or limited to Group Companies (with an AGA required).

Numbers, sizes and types of antennas were restricted as was the size and location of the demise or cabin for the Equipment (as opposed to antennas). Any change to these agreed rights triggered a rent review - they represented added value. Land owners had a threshold value below which agreement could not be reached. So we had a “base rent” that excluded monetised increases for sharing etc

Crucially, I have never once heard in nearly 20 years in this industry, of Operators agreeing to share with the land owner the revenue generated from a base station site. In the “good old days” the daily revenue was eye watering. So the initial draft of the New Code valuation regime had us all thinking “revenue share”. Fantastic. But no, this is also now excluded – the New Code excludes the use of the site as a radio base station and hence excludes any sharing of the revenue that it generates for its operator.

Other rights granted in a New Code agreement will still attract value as will the persons agreement to confer or be bound by the code right effectively the threshold value below which agreement cannot be reached.

So, effectively, the “base rents” agreed prior to the New Code, excluded upgrade rights etc, discounted its use as a radio base station and rents did not reflect any actual additional cost to the operator for the use of these additional rights. **Is this so different to the New Code Valuation Regime? Well, arguably, no, as far as “base rents” are concerned. It appears that all that has happened is that the upgrade, sharing, subletting rights etc that generated “added value” are now totally excluded. Is that right?**

Let us look at the background to this. According to the mobile operators- as responses to Ofcom and DCMS consultations and Hansard show very clearly- operators lobbied that some sites attracted “ransom pricing” or premium rents. Some land owners apparently realised that theirs was the only suitable site for miles around and so demanded a ransom rent. According to reports, the operators claimed that ransom rents were the major hurdle to rolling out their networks in rural areas.

Government changes to the planning regime to make site acquisition quicker and cheaper would be valueless if operators were still held to ransom by landowners demanding high rents in the first place and then additional extortionate increases for the rights to sublet, share and upgrade apparatus. Consider EE sharing the cost of their new ESN & "commercial" sites with other operators... and then upgrading them for 5G etc

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So what could the Government do to facilitate their vision of a "Connected Britain"? Simple, take away the obstacles that the Operators complained about. Hence we have a valuation regime that specifically excludes from the valuation process, the old "added value rights" to sublet, share and upgrade apparatus including antennas. The right to assign to another Code Operator is carved in stone. The absence of competing sites- ransom value- is excluded from the valuation process. This will all save costs.

So, no more "ransom pricing" -and yes, I know, the DCMS were never provided with any evidence of ransom rents by the operators, but Nordicity factored ransom rents in to their reports anyway and calculated that ***"the safeguards included in the Government proposal will reduce the incidence of ransom rents and therefore result in a 10% reduction in average wayleave rates across all infrastructure types."*** (DCMS Impact Assessment 23.09.2014 para 34. Annex 4 to Draft Bill).

And there we have it. In fact in the same DCMS Impact Assessment it was stated that "*The key monetised cost from the Government proposal is derived from changes to the wayleave valuation regime which is expected to lead to a 10% reduction in wayleave payments from telecommunications operators to landowners."* Yes, 10%, just 10%, not 50% or 90% or 99%.