

Direction under section 106(3) of the Communications Act 2003 applying the electronic communications code

Background

- 1.** Artemis Fibre Limited, whose registered company number is 15129999, has applied to Ofcom for a direction applying the Code to it.
- 2.** The date on which Ofcom received a completed application that meets the statutory 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 was 09 December 2023.
- 3.** By virtue of regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011 No. 1210), except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application.
- 4.** Prior to giving a decision under section 106(3) of the Act to apply the Code to Artemis Fibre Limited, Ofcom must publish a notification of its proposal to give the direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification.
- 5.** On 13 February 2024, Ofcom published a notification in accordance with section 107(6) of the Act of its proposal to give a direction applying the Code to Artemis Fibre Limited. That notification invited representations to Ofcom by no later than 5 pm on 15 March 2024.
- 6.** Ofcom received two representations objecting to the proposal set out in consultation. The first respondent was concerned about the rights available to Code operators. The respondent considered the Applicant should not be granted any rights not available to private individuals or other organisations and was concerned that the grant of Code powers would exempt the Applicant from rules governing the conduct of street works. The respondent also considered that if the Applicant applied to the court to secure an agreement for access to private land, it should normally be liable for the occupier's legal costs. The second respondent raised concerns about the build quality and safety of infrastructure activities undertaken by the Applicant's parent company.
- 7.** Having considered the objections to the proposal, Ofcom concluded that the first response raised issues concerning Government policy relating to the rollout of advanced communications networks. In particular, Government policy underpinning the statutory framework which establishes the Code and the rights available to Code operators. Ofcom has no power to alter these policies or the statutory framework that sets out the Code. Ofcom considered the concerns raised by the second respondent fell outside the scope of the matters which Ofcom is required to have regard to, in particular, when deciding whether to apply the Code in any persons case. Ofcom is therefore unable to include consideration of the issues raised by the respondents, as part of its assessment of the application under the Code.
- 8.** For the reasons set out in the explanatory statement accompanying Ofcom's consultation, Ofcom has had regard, in particular, to each of the matters set out in section 107(4) of the Act. Furthermore, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six requirements in section 4 of the Act.

Decision

9. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—

- (a) the Code shall apply to Artemis Fibre Limited (whose registered company number is 15129999) for the purposes of the provision by the Applicant of a system of infrastructure; and
- (b) that application of the Code shall have effect throughout the United Kingdom.

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

Interpretation

11. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (c) “**Ofcom**” means the Office of Communications.

12. For the purpose of interpreting this Direction—

- (a) headings and titles shall be disregarded;
- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

Signed



Brian Potterill

Policy Director, Networks & Communications

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

22 April 2024