

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

Background

1. The Applicant applied to Ofcom for a direction applying the Code to the Applicant.
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 4 May 2012.
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 in a person's case, 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 10 August 2012, Ofcom published a notification in accordance with section 107(6) of the Act of its proposal to give a direction applying the Code to the Applicant. That notification explained how, in proposing to grant the application, Ofcom had had regard, in particular, to each of the matters set out in section 107(4) of the Act and had also considered its proposal in accordance with its general duties in section 3 of the Act and the requirements in section 4 of the Act. The notification invited representations to Ofcom by no later than 5pm on 10 September 2012.
6. Ofcom did not receive any representations about the proposal and added the Applicant to the registered list of persons with powers under the Electronic Communications Code. The Applicant has been included on Ofcom's published list since at least 6 January 2013 and has been treated as having Code powers throughout.
7. Following an audit of Ofcom's registered list in April 2023, Ofcom has not been able to locate any direction applying Code powers to the Applicant in its records. Therefore, for the avoidance of doubt, and to ensure clarity with forward looking effect, Ofcom has decided to make this direction applying the Code to Fibrowave Networks Limited.

Decision

7. Ofcom, having reached a decision on the application from Fibrowave Networks Limited for a direction to apply code powers on 11 September 2012, hereby directs, in accordance with section 106 of the Act, as follows—
 - (a) the Code shall apply to Fibrowave Networks Limited (whose registered company number is 07817009) for the purposes of the provision by it of:
 - i. an electronic communications network; and
 - ii. a system of infrastructure which it is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks; and

- (b) that application of the Code shall have effect throughout the United Kingdom.

8. In this Direction, unless the context otherwise requires and subject to paragraph 9 below, words and expressions used in this Direction shall have the same meaning as they have been ascribed in the Act.

Interpretation

9. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means Fibrewave Networks Limited, whose registered company number is 07817009;
- (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) “**Ofcom**” means the Office of Communications.

10. 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.
- (c) expressions cognate with those referred to in this Direction shall be construed accordingly

Signed



Brian Potterill

Director of Mobile Network Strategy

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

9 August 2023