

Direction under Section 106(3) of the Communications Act 2003 modifying a direction applying the Electronic Communications Code in the case of Airwave Solutions Limited

A Notification of this proposal was published on 18 June 2009

Whereas:

- A. On 12 November 2001, the Secretary of State granted Airwave Solutions Limited a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising Airwave Solutions Limited to run the telecommunications systems specified in Annex A to the licence and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) ('the Code') to Airwave Solutions Limited for the purpose of running those systems;
- B. The Code was subsequently amended by Schedule 3 to the Communications Act 2003 (the 'Act');
- C. By virtue of paragraph 17 of Schedule 18 to the Act, Airwave Solutions Limited is treated after 25 July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act;
- D. On 18 June 2009, Ofcom published a notification of their proposal to modify the Deemed Direction by way of a further Direction under section 106 in accordance with sections 107 and 115 of the Act;
- E. Ofcom proposed to modify the Deemed Direction in accordance with section 115(1) of the Act so that it applied to Airwave Solutions Limited without restrictions;
- F. Ofcom did not receive any representations about their proposal to modify the Deemed Direction;
- G. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that in making this Direction they have acted in accordance with their relevant duties set out in sections 3 and 4 of the Act;

NOW, therefore, pursuant to section 106 of the Act, Ofcom make the following Direction-

The Code shall apply to Airwave Solutions Limited for the purposes of the provision by Airwave Solutions Limited of an electronic communications network in the United Kingdom.

1. Definitions and Interpretation

2. In this Direction, unless the contrary intention appears-

"Act" means the Communications Act 2003;

"Airwave Solutions Limited " means Airwave Solutions Limited (registered company number 03985643); and

"Ofcom" means the Office of Communications.

3. Except in so far as the context otherwise requires, words and phrases shall have the same meaning as in the Act, headings and titles shall be disregarded and expressions cognate with those referred to in this Direction shall be construed accordingly.

4. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

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

Steve Unger
Competition Policy Director

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

28 July 2009

Explanatory Statement

1.1 On 12 November 2001, the Secretary of State granted Airwave Solutions Limited a licence (the 'Licence') under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising Airwave Solutions Limited to run telecommunications systems meeting conditions set out in Annex A to the Licence, including a condition requiring any system to be "one by means of which every Message conveyed or to be conveyed is transmitted or received over radio spectrum at 380-385 MHz or 390-395 MHz and where every such Message is conveyed from or to the System directly to or from any apparatus designed or adapted to be capable of use while in motion". The Licence applied the telecommunications code (as set out in Schedule 2 to the 1984 Act) ("the Code")¹ to Airwave Solutions Limited for the purpose of running those systems.

1.2 The Communications Act 2003 ("the Act") removed the requirement to hold a licence to provide electronic communications networks and services. The Code continued to apply to Airwave Solutions Limited following the entry into force of the Act by virtue of paragraph 17 of Schedule 18 to the Act under which Airwave Solutions Limited is treated as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act. The Deemed Direction is assumed to be one given in relation to so much of Airwave Solution Limited's electronic communications network as was covered by the licence granted to it. The Deemed Direction which applies to Airwave Solutions Limited is national in scope.

1.3 On 10 June 2009, Airwave Solutions Limited requested that Ofcom modify the Deemed Direction under section 115(1) of the Act. Airwave Solutions Limited will be building a private mobile radio ('PMR') network for The London Organising Committee of the Olympic Games and Paralympic Games Limited ('LOCOG'). Some of the radio spectrum used by the PMR network will be at frequencies outside the ranges set out in Annex A to the Licence. The Deemed Direction did not, therefore, apply to Airwave Solutions Limited for the purposes of the PMR network that will be built for LOCOG.

1.4 On 18 June 2009, Ofcom published a notification of their proposal to modify the Deemed Direction by way of a further Direction under section 106 in accordance with sections 107 and 115 of the Act. No representations were received in relation to the proposal.

1.5 Ofcom considers that it should modify the Deemed Direction so that it applies to Airwave Solutions Limited without restrictions. The modification will facilitate Airwave Solutions Limited's building of the PMR network for LOCOG and is consistent with Ofcom's general policy to grant Code powers on a national basis and not subject to additional restrictions unless there is a clear reason for doing otherwise.

1.6 The PMR network which Airwave Solutions Limited will build for LOCOG will aid the successful management of the London Olympic and Paralympic Games 2012. LOCOG will use the network to provide PMR services to members of the Olympic Family: athletes, the International Olympic Committee, national Olympic committees, international federations of sport, the media, rights-holding broadcasters and Olympic partners (i.e. sponsors). The network will cover the Olympic site and London, the

¹ The Code was amended by Schedule 3 of the Communications Act 2003 with effect from 25 July 2003.

Olympic Route Network and parts of the South East. Airwave Solutions Limited has been contracted to build 30 base stations and associated apparatus.

1.7 Airwave Solutions Limited has explained that services need to be up and running by November 2010 and that it needs to start construction work in September or October 2009. It considers that to meet these targets it needs Code powers in order to carry out works in connection with the installation of apparatus.

1.8 Ofcom has, in considering Airwave Solutions Limited's request, acted in accordance with its relevant duties set out in sections 3 and 4 of the Act in particular its duty to further the interests of citizens in relation to communications matters and to promote the interests of all persons who are citizens of the European Union. Ofcom considers that modifying the Deemed Direction in this case will further the interests of citizens in relation to communications matters as it will assist Airwave Solutions Limited in the delivery of the network required by LOCOG for the London Olympic and Paralympic Games 2012.