

CNS - Notification under Section 107(6) of the Communications Act 2003

Proposal to revoke a direction applying the Electronic
Communications Code to Communications Networking
Services (UK)

Consultation

Publication date: **31 August 2005**

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Notification under Section 107(6) of the Communications Act 2003

Proposal to revoke a direction applying the Electronic Communications Code to France Telecom Network Services UK Limited

1. By virtue of paragraph 17 of Schedule 18 to the Communications Act 2003 (the 'Act') Communications Networking Services (UK) ('CNS') (registered company number 02840475) is treated after 25 July 2003 as a person in whose case the Electronic Communications Code (the 'Code') applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act.
2. In accordance with section 115 of the Act, the Office of Communications ('Ofcom') propose to revoke the Deemed Direction by way of a further direction (the 'Draft Direction') under section 106 of the Act, following an application for such revocation by CNS.
3. The Draft Direction and accompanying explanatory statement, which sets out Ofcom's reasons for the proposal are available at http://www.ofcom.org.uk/telecoms/ioi/e_c_c/106_dirs/cns/#content/. Hard copies of the draft Direction and the explanatory statement will be made available on request. For hard copies, please contact Michael Galvin on 020 7783 4158 or by sending an email to michael.galvin@ofcom.org.uk.
4. Representations on the Draft Direction may be made to: Michael Galvin, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA by not later than 5pm on **31 August 2005**.
5. All confidential information should be clearly marked as such and separated out into a confidential annex. All representations received will be published, unless it is clearly marked that the response is confidential, and made available in Ofcom's Knowledge Centre. Please contact Jan Kacperek (jan.kacperek@ofcom.org.uk) for further information with respect to public inspection or, for responses to the draft Direction, visit Ofcom's website (www.ofcom.org.uk).
6. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.

Stephen Unger
Director of Telecoms Technology, Competition and Markets

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

28 July 2005

**[Draft] Direction under Section 106(3) of the Communications Act 2003
revoking a direction applying the Electronic Communications Code in the case
of Communications Networking Services**

[A Notification of this proposal was published on 28 July 2005]

Whereas:

- 1.1 On 18 December 1996, the Secretary of State granted Communications Networking Services (UK) ('CNS') (registered company number 02840475) who was then called Concert Communications a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising CNS to run a telecommunications system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to CNS;
- 1.2 By virtue of section 106 of the Communications Act 2003 (the 'Act'), which came into force on 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Act;
- 1.3 By virtue of paragraph 17 of Schedule 18 to the Act, CNS 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;
- 1.4 The Office of Communications ('Ofcom') have received an application from CNS dated 10 June 2005 for the revocation of the Deemed Direction in accordance with section 115(2) of the Act;
- 1.5 On 28 July 2005, Ofcom published a notification of their proposal to revoke the Deemed Direction by way of a further Direction under section 106 in accordance with sections 107 and 115 of the Act;
- 1.6 Ofcom have considered every representation made to them about the proposed Direction;
- 1.7 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-

1. The direction applying the electronic communications code to CNS under section 106(3) of the Act by virtue of paragraph 17 of Schedule 18 to the Act shall be revoked.
2. 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.
3. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
4. This Direction shall take effect on the day it is published..

Stephen Unger
Director of Telecoms Technology, Competition and Markets

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

[Date]

Explanatory Statement

1. On 18 December 1996, the Secretary of State granted Communications Networking Services (UK) ('CNS') who was then called Concert Communications a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising CNS to run a telecommunications system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to CNS.
2. Following a change in the regime for electronic communications after 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Communications Act 2003 (the 'Act').
3. The Code applied to CNS post 25 July 2003 by virtue of paragraph 17 of Schedule 18 to the Act, under which CNS 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.
4. On 10 June 2005, CNS made an application for the revocation of its Code powers under section 115(2) of the Act and Ofcom is now proposing to revoke the Deemed Direction.
5. In its application for the revocation of the Code, CNS explained that it does not own or install any infrastructure other than on private property and has no intention of doing so. Any network infrastructure required by CNS is purchased from BT plc. It, therefore, explained that it did not need to retain Code powers, as it has no need for such powers.
6. In considering CNS' application, Ofcom considers that it has 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 does not consider that the revocation of Code powers in this case is contrary to its duties set out in the Act and will not prove to be detrimental to the interests of citizens in relation to communications matters. CNS does not need to use Code powers and therefore the revocation of these powers will have little if any effect.
7. For these reasons, Ofcom believes that it is now appropriate to revoke the Deemed Direction as requested by CNS. Thereafter, amongst other things, CNS would not be permitted to benefit from certain exemptions under Town and Country Planning legislation and nor would it be able to carry out works in connection with the installation of apparatus in the streets without the need to obtain a street works licence under the New Roads and Street Works Act 1991.

How to respond

8. Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on 31 August 2005.
9. Ofcom prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2),

among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

10. Please can you send your response to michael.galvin@ofcom.org.uk.
11. Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Michael Galvin
Competition and Markets
4th Floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7783 4158
Fax: 020 7783 4109

Confidentiality

12. Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).
13. All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.
14. Ofcom reserves its power to disclose certain confidential information where this is necessary to fulfil its functions, although in practice it would do so only in limited circumstances.
15. Please also note that copyright and all other intellectual property in responses will be assumed to be assigned to Ofcom unless specifically retained.

Next steps

16. Following the end of the consultation period, and subject to responses, Ofcom intends to publish the final direction and explanatory statement revoking the Code in so far as it applies to France Telecom.

Ofcom's consultation processes

17. Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.
18. This consultation is shorter than Ofcom's standard 10 week period because it is important that Code operators should be able to utilise these powers where appropriate as early as possible.
19. If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at

consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

20. If you would like to discuss Ofcom's consultation processes more generally, you can do so by contacting:

Tony Stoller
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7981 3550
Fax: 020 7981 3630
tony.stoller@ofcom.org.uk

Annex 1

Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

- A1.1 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

- A1.2 We will be clear about who we are consulting, why, on what questions and for how long.
- A1.3 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A1.4 We will normally allow ten weeks for responses to consultations on issues of general interest.
- A1.5 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
- A1.6 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

- A1.7 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 2

Consultation response cover sheet

- A2.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: CNS - Notification under Section 107(6) of the Communications Act 2003

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)