

# **Direction under Section 106(3) of the Communications Act 2003 applying the electronic communications code in the case of allpay Limited**

**A Notification of this proposal was published on 27 May 2011**

Whereas:

(A) On 5 May 2011, allpay Limited made an application for the electronic communications code (the "Code") for the purposes of the provision of an electronic communications network in the United Kingdom in accordance with section 107(1) of the Act and the notification published by Ofcom by virtue of the Transitional Provisions under section 107(2) of the Act on 10 October 2003 setting out their requirements with respect to the content of an application for the electronic communications code and the manner in which such an application is to be made;

(B) On 27 May 2011, Ofcom published a notification of their proposal to give a direction applying the Code to allpay Limited in accordance with section 107 of the Act;

(C) Ofcom did not receive any representations in relation its proposal to give a Direction in this case;

(D) For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that they have acted in accordance with their relevant duties set out in sections 3, 4 and 107(4) of the Act

**NOW, therefore, pursuant to section 106(3) of the Act, Ofcom make the following Direction-**

1. The electronic communications code shall apply to allpay Limited for the purposes of the provision by allpay Limited of an electronic communications network to have effect in the United Kingdom.

Definitions and Interpretation

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

"Act" means the Communications Act 2003;

"allpay Limited" means allpay Limited (registered company number 02933191);

"Ofcom" means the Office of Communications; and


"Transitional Provisions" means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.

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.

**David Stewart**

A handwritten signature in black ink, appearing to be 'D. Stewart'.

**Competition Policy Director**

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

8 July 2011

# Explanatory Statement

1.1 On 5 May 2011, allpay Limited applied for the Code for the purposes of the provision by it of an electronic communications network in the United Kingdom. This application was made in accordance with section 107(1) of the Communications Act 2003 (the 'Act') and meets the requirements for any such application for a Direction applying the Code, and the manner in which such an application has to be made, as set out in the Notification published by Ofcom (by virtue of the Transitional Provisions in the Act) on 10 October 2003 under section 107(2) of the Act.

1.2 In considering allpay Limited's application, Ofcom has acted in accordance with its relevant duties set out in sections 3 and 4 of the Act. In particular, Ofcom has considered its duty in section 3(1)(b) *"to further the interests of consumers in relevant markets, where appropriate by promoting competition"* and the first Community requirement set out in section 4(3)(a) to promote competition *"in relation to the provision of electronic communications networks and electronic communications services"*.

1.3 allpay Limited's application explained that it has started to provide broadband services to communities in predominantly rural areas via wireless technology. allpay Limited's service provision targets areas that other providers have failed to effectively serve. Ofcom is therefore of the view that its proposal to give Code powers to allpay Limited is consistent with both of the above Community requirements.

1.4 In addition to the requirements of sections 3 and 4 of the Act, Ofcom has also had regard to its duties set out in section 107(4) of the Act. These are set out below.

## **The benefit to the public of the electronic communications network by reference to which the Code is to be applied to the applicant**

1.5 allpay Limited has initially focussed on providing broadband services to domestic customers but intends to offer services to businesses as well. As noted at paragraph 1.4 above, allpay Limited's service provision targets areas that other providers have failed to effectively serve. The broadband service is provided via wireless links which transmits through local high access points (primarily on churches) and is then received via subscriber module at the customer's premises. allpay Limited explained that the wireless technology that it utilises is capable of providing reliable links with connection speeds of up to 35 Mb.

1.6 allpay Limited currently provides broadband services in the Diocese of Hereford, including Herefordshire, South Shropshire and parts of Wales and Worcestershire. allpay Limited is also in discussions to extend into more of Wales and the East Midlands. Ultimately they intend to extend the service across the United Kingdom.

1.7 Ofcom considers that the network is likely to increase competition in the provision of broadband services and provide services in areas where there are currently few, if any, alternative providers. Ofcom therefore considers that the network will benefit the public.

## **The practicability of the provision of the network without the Code**

1.8 allpay Limited explained that the need to seek planning permission would cause unnecessary costs and delays, and in particular in cases involving churches (which are key

to allpay Limited's model) the process would be complicated and lengthy due to issues surrounding ownership. As a result, allpay Limited argued that it would be impractical, if not impossible, to expand its network without Code powers.

1.9 Ofcom considers that it should grant Code powers to allpay Limited and that, in doing so, allpay Limited would be better placed to deploy its broadband network.

**The need to encourage the sharing of the use of electronic communications apparatus**

1.10 At present allpay Limited does not share their infrastructure but would be willing to look into the possibility of doing so in the future.

**Whether the Applicant will be able to meet liabilities as a consequence of: (i) the application of the Code; and (ii) any conduct in relation to the application of the Code**

1.11 allpay Limited has provided Ofcom with satisfactory evidence as to its ability to put in place funds for meeting liabilities arising as a consequence of: (i) the application of the Code; and (ii) any conduct in relation to the application of the Code.