

Direction under Section 106(3) of the Communications Act 2003 revoking a direction applying the Electronic Communications Code in the case of France Telecom Network Services UK Limited

A Notification of this proposal was published on 28 July 2005

Whereas:

- A. On 4 December 2001, the Secretary of State granted France Telecom Network Services UK Limited ('France Telecom') (registered company number 04220014) a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising France Telecom 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 France Telecom;
- B. 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;
- C. By virtue of paragraph 17 of Schedule 18 to the Act, France Telecom 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. The Office of Communications ('Ofcom') received an application from France Telecom dated 14 June 2005 for the revocation of the Deemed Direction in accordance with section 115(2) of the Act;
- E. 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;
- F. Ofcom did not receive any representations in relation to its proposals;
- 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-

- 1. The direction applying the electronic communications code to France Telecom 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**

29 September 2005

Explanatory Statement

1.1 On 4 December 2001, the Secretary of State granted France Telecom Network Services UK Limited ('France Telecom') a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising France Telecom 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 France Telecom.

1.2 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').

1.3 The Code applied to France Telecom post 25 July 2003 by virtue of paragraph 17 of Schedule 18 to the Act, under which France Telecom has been treated after 25 July 2003 as a person in whose case the Code applied by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act.

1.4 On 14 June 2005, France Telecom made an application for the revocation of its Code powers under section 115(2) of the Act and Ofcom has now decided to revoke the Deemed Direction.

1.5 In its application for the revocation of the Code, France Telecom explained that it does not use or need to use Code powers and has no intention of using them in the foreseeable future.

1.6 On 28 July 2005, Ofcom published a notification under section 107(6) and draft Direction under section 106(3) in which it set out its proposal to revoke Code powers in so far as they applied to France Telecom. Ofcom did not receive any representations in relation to its proposals.

1.7 In considering France Telecom's 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. France Telecom does not need to use Code powers and therefore the revocation of these powers will have little if any effect.

1.8 For these reasons, Ofcom believes that it is now appropriate to revoke the Deemed Direction as requested by France Telecom. Amongst other things, France Telecom does not now benefit from certain exemptions under Town and Country Planning legislation¹ and nor is it permitted to carry out street works unless it specifically seeks a licence to do so under the New Roads and Street Works Act 1991.

¹ See Part 24 of the Town and Country Planning, England and Wales (General Permitted Development) Order 1995. SI 1995/418 as amended. Planning (General Development) (Amendment) Order (Northern Ireland) 2003 SR No. 98. Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2001 SSI 2001/266.