

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

### **Background**

1. The Applicant has 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 17 August 2020.
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 to the Applicant, 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 12 November 2020, Ofcom published, in accordance with section 107(6) of the Act, a notification of its proposal to give a direction applying the Code to the Applicant for the reasons set out in the consultation document accompanying that notification. That notification invited representations to Ofcom by no later than 5pm on 14 December 2020.
6. Ofcom received 1 representation objecting to the proposal. The respondent was concerned about the potential health issues, particularly in individuals such as children and those pregnant, which arise from weak electromagnetic fields (EMFs) that might be generated by communications equipment deployed by the Applicant (and other persons to whom Ofcom applies the Code). Given the above concerns, the respondent considered that Ofcom had failed to adhere to its obligations under the Equality Act 2010 and section 4 of the Act.
7. Having considered the objections to the proposal, it was Ofcom's view that the main issues raised concern Government policy relating to the rollout of advanced communications networks and the technology they employ. In particular, the Government's assessment of the safety of non-ionising radiation. Ofcom has no power to alter these policies or the statutory framework that sets out the Code. It is therefore unable to include consideration of the issues raised by the respondent as part of its assessment of the application under the Code. Ofcom has published an [advice page](#) on its website, which explains the regulation of EMFs and identifies the organisations responsible for ensuring that communications providers comply with the relevant regulations.
8. When carrying out our duties and relevant assessments we take into account advice given by [Public Health England](#) (PHE). In this case, that is advice relating to the safety of EMFs. PHE is an expert health body and have a statutory duty to provide advice to Government on any health effects that may be caused by exposure to EMFs. PHE's current advice is that EMFs levels should comply with the [ICNIRP](#) guidelines for limiting exposure. PHE considers that health-related evidence and reviews support the view that health effects are unlikely to occur if exposures are below ICNIRP's internationally agreed guideline levels.

9. For the reasons set out in the explanatory statement accompanying Ofcom’s consultation, Ofcom has had regard, in particular, to each of the matters set out in section 107(4) of the Act. Furthermore, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six requirements in section 4 of the Act.

**Decision**

10. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—

- (a) the Code shall apply to the Applicant for the purposes of the provision by the Applicant of an electronic communications network; and
- (b) that application of the Code shall have effect throughout the United Kingdom.

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

**Interpretation**

12. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means Digital Infrastructure Ltd, whose registered company number is 12705502;
- (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) “**Ofcom**” means the Office of Communications.

13. 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.

**Signed**



**Brian Potterill**

**Competition Policy Director**

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

26 January 2021