

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

A Notification of this proposal was published on 31 January 2008

Whereas:

- (A) On 22 January 2008, Mapesbury Communications 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 31 January 2008, Ofcom published a notification of their proposal to give a direction applying the Code to Mapesbury Communications Limited in accordance with section 107 of the Act;
- (C) Ofcom did not receive any representations about the proposed Direction;
- (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 Mapesbury Communications Limited for the purposes of the provision by Mapesbury Communications 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;

"Mapesbury Communications Limited " means Mapesbury Communications Limited (registered company number 04553934)

"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
Competition Policy Director

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

26 March 2008

Explanatory Statement

1.1 On 22 January 2008, Mapesbury Communications Limited (“Mapesbury”) applied for the electronic communications code (the “Code”) for the purposes of the provision by it of an electronic communications network. 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 On 31 January 2008, Ofcom published a Notification and draft Direction proposing to grant Code powers to Mapesbury. Representations were sought by 3 March 2008. None, however, were forthcoming. Ofcom has therefore today issued a Direction granting Code powers to Mapesbury.

1.3 In considering Mapesbury’s application, Ofcom acted in accordance with its relevant duties set out in sections 3 and 4 of the Act. In particular, Ofcom considered its duty set out 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 services”.

1.4 Mapesbury Communications Limited were awarded a Wireless Telegraphy Act licence for the frequencies 1781.7-1785MHz paired with 1876.7-1880MHz and wishes to utilise this spectrum to deploy a mobile public electronic communications service (“PECS”) in targeted urban areas. Code powers would therefore help to promote competition in the provision of mobile electronic communications services.

1.5 In addition to the requirements of section 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

1.6 As explained in paragraph 1.4, Ofcom understands that Mapesbury intends to rollout a mobile public electronic communications network with a view to offering mobile PECS. Mapesbury initially intends to focus deployment in targeted urban areas and would therefore aim to increase price competition in the provision of PECS to the benefit of the public.

1.7 For this reason, Ofcom considers that it is appropriate to grant Code powers to Mapesbury.

The practicability of the provision of the network without the Code

1.8 The Code enables, amongst other things, communications providers to construct their networks and, in particular, states that they “shall, for the statutory purposes, have the right to....(a) install electronic communications apparatus, or keep electronic communications apparatus installed, under, over, [in, on] along or across...a street.” The Code is therefore a means by which these networks could be deployed more quickly.

1.9 Mapesbury's application explained that the company wishes to install electronic communications apparatus and that part of this will involve the installation of its transmission apparatus on public highways. The types of apparatus in this case are designed to be unobtrusive to the same extent as similar street furniture such as lamp posts.

1.10 In addition, Mapesbury's principal competitors in the market already have Code powers and therefore should it have to rely on the normal planning processes it would be placed at distinct competitive disadvantage.

1.11 For these reasons, Ofcom considers that it should grant Code powers to Mapesbury to enable it to deploy its network more quickly than it otherwise could.

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

1.12 Mapesbury explained that it would be willing to share its apparatus with responsible providers of PECS subject to such sharing not interfering with its own transmission services.

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

1.13 Mapesbury has explained that it would intend to place funds in an escrow account and has explained the amount that it would place in such an account in the first year and the methodology for calculating that amount.