

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

### **Proposal to give a direction applying the Electronic Communications Code to Internet AIRworks Limited**

1. The Office of Communications (“Ofcom”) propose to give a direction under section 106(3) of the Communications Act 2003 (the “Act”) applying the electronic communications code (the “Code”) to Internet AIRworks Limited.
2. The draft Direction and accompanying explanatory statement setting out Ofcom’s reasons for the proposal are available at <http://www.ofcom.org.uk/consultations/>. 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](mailto:Michael.galvin@ofcom.org.uk).
3. Representations on the proposal may be made to: Michael Galvin, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA by not later than 5pm on **10 December 2004**.
4. 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](mailto: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](http://www.ofcom.org.uk)).
5. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.
6. In this Notification, “Internet AIRworks Limited” means Internet AIRworks Limited (registered company number 5081688).

**Sean Williams**  
**Partner, Competition and Markets**

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

**11 November 2004**

**[Draft] Direction under Section 106(3) of the Communications Act 2003  
applying the electronic communications code in the case of Internet AIRworks  
Limited**

**[A Notification of this proposal was published on X November 2004]**

Whereas:

- (A) On 28 October 2004 Internet AIRworks 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 11 November 2004 Ofcom published a notification of their proposal to give a direction applying the Code to Internet AIRworks Limited in accordance with section 107 of the Act;
- (C) Ofcom have consider every representation made to them 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 Internet AIRworks Limited for the purposes of the provision by Internet AIRworks 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;

"Internet AIRworks Limited" means Internet AIRworks Limited (registered company number 5081688)

"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.

**Sean Williams**  
**Partner, Competition and Markets**

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

**[Date]**

# Explanatory Statement

1.1 On 28 October 2004 Internet AIRworks Limited (“Internet AIRworks”) applied for the electronic communications code (the “Code”) for the purposes of the provision 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 In considering Internet AIRworks 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 services”. The direction applying the code helps to promote competition by assisting Internet AIRworks in its endeavours to build infrastructure which will increase competition in the provision of electronic communications networks and services. In considering Internet AIRworks’ application, Ofcom has also had regard to its duties set out in section 107(4) of the Act, as 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**

1.3 Internet AIRworks proposes to install a wireless broadband internet communications network offering a variety of symmetrical speeds to fit customers’ requirements. The use of wireless technology will allow Internet AIRworks to offer broadband services to communities beyond the reach of traditional fixed-based asymmetric digital subscriber line services. Also, as it has explained to Ofcom, its network will be capable of supporting equivalent speeds in either direction. The topography of some of the areas in which Internet AIRworks intends to offer services required the company to come up with an innovative solution to overcome the limitations of radio waves and the vagaries of reception. Internet AIRworks has managed this with its proprietary technology.

1.4 Initially the network is being constructed in the Devon area. But Internet AIRworks intends to expand the network into other areas in the south west and therefore its wireless access technology could help to increase broadband penetration in some of the more remote areas of the region. More generally, it is also likely to increase competition in the provision of broadband services.

1.5 For these reasons, Ofcom believes that the proposed network would be of benefit to the public, as it would enable some customers to obtain broadband services which are not presently available to them. Elsewhere it is likely to increase competition in the provision of electronic communication services.

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

1.6 Internet AIRworks will need to install antennae near to customers’ premises in order to provide high quality and reliable transmission. In the absence of Code powers, Internet AIRworks would need to rely on the Town and Country Planning

process established in the Town and Country Planning Act 1990. This would require them to submit an application on each occasion that they wished to install an antenna. Internet AIRworks does not therefore believe that the Town and Country Planning process would provide a practicable alternative to Code powers. It would be unable to meet customers' requirements promptly. Internet AIRworks believes that it would be disadvantaged in comparison to Communications Providers who have Code powers and would not be able to realistically compete with them.

1.7 For these reasons, Ofcom believes that Internet AIRworks would benefit from Code powers and these would enable it to compete effectively with other Communications Providers.

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

1.8 Internet AIRworks has stated that it would be willing to share facilities where practicable and where agreement can be reached on the commercial terms for sharing of the facilities. However, Internet AIRworks' network would mainly consist of antennae that would be placed on pre-existing or newly installed poles and towers situated on private land. Internet AIRworks would not therefore be in a position to grant access to this land. This would be a matter for the landowner.

1.9 More generally, Internet AIRworks is aware of the restrictions and conditions to which it would in any case be subject to under the prior approval procedures established in the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2001. This regime would require Internet AIRworks to liaise with interested parties before installing apparatus.

1.10 Ofcom notes that Internet AIRworks would not generally be in a position to agree to the sharing of infrastructure, as such infrastructure would be sited on private land. Nonetheless, Ofcom is of the view that where such infrastructure is not sited on private land, Internet AIRworks should consider any request to share that infrastructure.

### **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 Internet AIRworks has explained that it does not intend, and nor does it expect to, install any apparatus on public highways and therefore it does not need, at this stage, to put funds in place to meet any potential liabilities. Internet AIRworks has nonetheless agreed that it would inform Ofcom, and agree an appropriate methodology to guarantee that sufficient funds would be available to meet any potential liabilities, should it find that it needed to install apparatus on public land.

### **How to respond**

1.12 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on **10 December 2004**.

1.13 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.

1.14 Please can you send your response to Michael.galvin@ofcom.org.uk.

1.15 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

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

### **Confidentiality**

1.16 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](http://www.ofcom.org.uk), ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).

1.17 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.

1.18 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.

1.19 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**

1.20 Following the end of the consultation period, depending on responses to the consultation, Ofcom intends to publish the final direction and explanatory statement applying the Code to Internet AIRworks Limited.

### **Ofcom's consultation processes**

1.21 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.

1.22 This consultation is shorter than Ofcom's standard 10 week period because - for guidance on valid reasons see Ofcom's published consultation guidelines, available at [http://www.ofcom.org.uk/consultations/consult\\_method/consult\\_guide.pdf](http://www.ofcom.org.uk/consultations/consult_method/consult_guide.pdf).

1.23 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](mailto: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.

1.24 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7981 3585  
Fax: 020 7981 3333  
E-mail: [philip.rutnam@ofcom.org.uk](mailto:philip.rutnam@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

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

2 We will be clear about who we are consulting, why, on what questions and for how long.

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.

4 We will normally allow ten weeks for responses to consultations on issues of general interest.

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.

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

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

2.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://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, unless we are asked not to.

2.2 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.

2.3 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 confirm on the response cover sheet that Ofcom can publish their responses upon receipt.

2.4 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.

2.5 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, 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:

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

Name/contact details/  
job title

Whole response

Organisation

Part of the response

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)?

Yes

No

### 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 all intellectual property rights in the response vest with Ofcom. If I have sent my response by email, Ofcom can disregard any standard email text about not disclosing email contents and attachments.

Ofcom can publish my response: on receipt  once the consultation ends

Name

Signed (if hard copy)

