

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

Proposal to modify a direction applying the Electronic Communications Code to Airwave Solutions Limited

1. By virtue of paragraph 17 of Schedule 18 to the Communications Act 2003 (the 'Act') Airwave Solutions Limited is treated after 25 July 2003 as a person in whose case the Electronic Communications Code (the 'Code') applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act.
2. In accordance with section 115 of the Act, the Office of Communications ('Ofcom') propose to modify the terms on which the Code is applied in Airwave Solutions Limited's case under the Deemed Direction by way of a further direction (the 'Draft Direction') under section 106 of the Act.
3. The Draft Direction and accompanying explanatory statement setting out Ofcom's reasons for the proposal are available on Ofcom's website <http://www.ofcom.org.uk>. 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.
4. Representations on the Draft Direction may be made to: Michael Galvin, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA by not later than 5pm on **20 July 2009**.
5. 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) for further information with respect to public inspection or, for responses to the draft Direction, visit Ofcom's website (www.ofcom.org.uk).
6. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.
7. In this Notification, "Airwave Solutions Limited" means Airwave Solutions Limited (registered company number 03985643).

Steve Unger
Competition Policy Director

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

18 June 2009

**[Draft] Direction under Section 106(3) of the Communications Act 2003
modifying a direction applying the Electronic Communications Code in the
case of Airwave Solutions Limited**

[A Notification of this proposal was published on 18 June 2009]

Whereas:

- A. On 12 November 2001, the Secretary of State granted Airwave Solutions Limited a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising Airwave Solutions Limited to run the telecommunications systems specified in Annex A to the licence and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) ('the Code') to Airwave Solutions Limited for the purpose of running those systems;
- B. The Code was subsequently amended by Schedule 3 to the Communications Act 2003 (the 'Act');
- C. By virtue of paragraph 17 of Schedule 18 to the Act, Airwave Solutions Limited 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. Ofcom propose to modify the Deemed Direction in accordance with section 115(1) of the Act so that it applies to Airwave Solutions Limited without restrictions;
- E. On 18 June 2009, Ofcom published a notification of their proposal to modify the Deemed Direction by way of a further Direction under section 106 in accordance with sections 107 and 115 of the Act;
- F. Ofcom have considered every representation made to them about this Direction;
- 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-

The Code shall apply to Airwave Solutions Limited for the purposes of the provision by Airwave Solutions Limited of an electronic communications network in the United Kingdom.

1. Definitions and Interpretation

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

"Act" means the Communications Act 2003;

"Airwave Solutions Limited " means Airwave Solutions Limited (registered company number 03985643); and

"Ofcom" means the Office of Communications.

4. 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.

5. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

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

Steve Unger
Competition Policy Director

**A person authorised by Ofcom under paragraph 18 of the Schedule to
the Office of Communications Act 2003**

[Date]

Explanatory Statement

1.1 On 12 November 2001, the Secretary of State granted Airwave Solutions Limited a licence (the 'Licence') under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising Airwave Solutions Limited to run telecommunications systems meeting conditions set out in Annex A to the Licence, including a condition requiring any system to be "one by means of which every Message conveyed or to be conveyed is transmitted or received over radio spectrum at 380-385 MHz or 390-395 MHz and where every such Message is conveyed from or to the System directly to or from any apparatus designed or adapted to be capable of use while in motion". The Licence applied the telecommunications code (as set out in Schedule 2 to the 1984 Act) ("the Code")¹ to Airwave Solutions Limited for the purpose of running those systems.

1.2 The Communications Act 2003 ("the Act") removed the requirement to hold a licence to provide electronic communications networks and services. The Code continued to apply to Airwave Solutions Limited following the entry into force of the Act by virtue of paragraph 17 of Schedule 18 to the Act under which Airwave Solutions Limited is treated as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act. The Deemed Direction is assumed to be one given in relation to so much of Airwave Solution Limited's electronic communications network as was covered by the licence granted to it. The Deemed Direction which applies to Airwave Solutions Limited is national in scope.

1.3 On 10 June 2009, Airwave Solutions Limited requested that Ofcom modify the Deemed Direction under section 115(1) of the Act. Airwave Solutions Limited will be building a private mobile radio ('PMR') network for The London Organising Committee of the Olympic Games and Paralympic Games Limited ('LOCOG'). Some of the radio spectrum used by the PMR network will be at frequencies outside the ranges set out in Annex A to the Licence. The Deemed Direction does not, therefore, apply to Airwave Solutions Limited for the purposes of the PMR network that will be built for LOCOG.

1.4 Ofcom considers that it should modify the Deemed Direction so that it applies to Airwave Solutions Limited without restrictions. The modification will facilitate Airwave Solutions Limited's building of the PMR network for LOCOG and is consistent with Ofcom's general policy to grant Code powers on a national basis and not subject to additional restrictions unless there is a clear reason for doing otherwise.

1.5 The PMR network which Airwave Solutions Limited will build for LOCOG will aid the successful management of the London Olympic and Paralympic Games 2012. LOCOG will use the network to provide PMR services to members of the Olympic Family: athletes, the International Olympic Committee, national Olympic committees, international federations of sport, the media, rights-holding broadcasters and Olympic partners (i.e. sponsors). The network will cover the Olympic site and London, the Olympic Route Network and parts of the South East. Airwave Solutions Limited has been contracted to build 30 base stations and associated apparatus.

1.6 Airwave Solutions Limited has explained that services need to be up and running by November 2010 and that it needs to start construction work in September or

¹ The Code was amended by Schedule 3 of the Communications Act 2003 with effect from 25 July 2003.

October 2009. It considers that to meet these targets it needs Code powers in order to carry out works in connection with the installation of apparatus.

1.7 Ofcom has, in considering Airwave Solutions Limited's request, 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 considers that modifying the Deemed Direction in this case will further the interests of citizens in relation to communications matters as it will assist Airwave Solutions Limited in the delivery of the network required by LOCOG for the London Olympic and Paralympic Games 2012.

How to respond

1.8 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on **20 July 2009**. In this case, Ofcom considers that it should not allow a consultation period of ten weeks as this would delay network build.

1.9 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) in order, 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.

1.10 Please send your response to michael.galvin@ofcom.org.uk.

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

Michael Galvin
Competition Group
4th Floor
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Tel: 020 7783 4158

Confidentiality

1.12 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, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential and specify why. Please also place such parts in a separate annex.

1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those which are marked as confidential, in order to meet legal obligations.

1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements.

Ofcom's approach on intellectual property rights is explained further on its website, at http://www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer.

Next steps

1.15 At the end of the consultation, subject to respondents' views, Ofcom proposes to modify the Deemed Direction as set out in this document.

Further information

1.16 If you have any wish to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Michael Galvin using the contact details given above.

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, 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)