

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

**A Notification of this proposal was published on 10 March 2011**

Whereas:

(A) On 25th January 2011, Gigaclear 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 10 March 2011, Ofcom published a notification of their proposal to give a direction applying the Code to Gigaclear Limited in accordance with section 107 of the Act;

(C) Ofcom did not receive any representations in relation its proposal to give a Direction in this case;

(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 Gigaclear Limited for the purposes of the provision by Gigaclear 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;

"Gigaclear Limited" means Gigaclear Limited (registered company number 07476617);

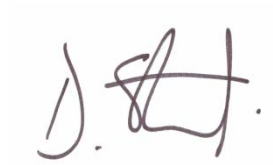
"Ofcom" means the Office of Communications; and

"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.

A handwritten signature in black ink, appearing to read 'D. Stewart', with a stylized flourish at the end.

**David Stewart**  
**Competition Policy Director**

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

10 May 2011

# Explanatory Statement

1.1 On 25 January 2011, Gigaclear Limited applied for the electronic communications code (the “Code”) for the purposes of the provision by it of an electronic communications network. Gigaclear Limited provided further information to complete its application in February 2011. 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 10 March 2011, Ofcom published a notification and draft Direction in which it proposed to give code powers to Gigaclear Limited. Ofcom did not receive any representations in relation to its proposal and therefore has published a Direction giving Code powers in this case.

1.3 In considering Gigaclear Limited’s 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”.

1.4 Gigaclear Limited’s application explains how they propose to provide an access network providing connections and communications services to homes, businesses and organisations and the associated short haul and long haul connections required to interconnect with other networks and systems. Gigaclear Limited intends to mainly use fibre and their own ducts but also anticipate that they may use other technologies and duct, pole and passive infrastructure from other suppliers. Gigaclear Limited intends to commence operations in the Thames Valley in 2011 and to expand to cover a large number of villages and small towns dispersed particularly in commuter belts across the United Kingdom.

1.5 Gigaclear Limited’s application also explains that they intend to use experienced telecommunications project management businesses to plan and manage any network build, ensuring all contractors have in place all the necessary approvals and processes to meet the requirements of the Code.

1.6 In addition to the requirements of sections 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**

1.7 Gigaclear Limited explained how, from launch, their fibre network will provide each home or business with a 1Gbps Internet connection enabling access to a full range of voice, video and data services from 3<sup>rd</sup> party providers.

1.8 As explained in paragraph 1.3, Gigaclear Limited intends to commence operations in the Thames Valley in 2011 and expand the service across the United Kingdom.

1.9 Ofcom considers that the network is likely to increase competition in the provision of broadband services. Ofcom therefore considers that the network will benefit the public.

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

1.10 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.

1.11 Gigaclear Limited believe that to efficiently build the infrastructure required to provide services they will require access to the Public Highway and private lands. Their application explains that Code powers will enable them to carry out street works in a more coordinated fashion providing their services to homes and businesses more efficiently.

1.12 Gigaclear Limited’s application notes that their competitors already possess Code powers and therefore should it have to rely on the usual planning processes it would be placed at a competitive disadvantage.

1.13 For those reasons, Ofcom considers that it should grant Code powers to Gigaclear Limited and that, in doing so, Gigaclear Limited would be better placed to deploy and maintain its broadband network.

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

1.14 Gigaclear Limited’s application explains that they are willing to share apparatus where feasible and that they are in discussion with both other utilities and local government as to how best to share their apparatus.

1.15 Once Gigaclear Limited has put new infrastructure in place, they intend to seek to maximise the use of that infrastructure through entering in to appropriate commercial relationships with other operators and service providers.

### **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**

1.16 Gigaclear Limited has provided Ofcom with satisfactory evidence as to its ability to put in place funds for meeting liabilities arising as a consequence of: (i) the application of the Code; and (ii) any conduct in relation to the application of the Code.