

# Proposal to apply Code powers to Dense Air Limited

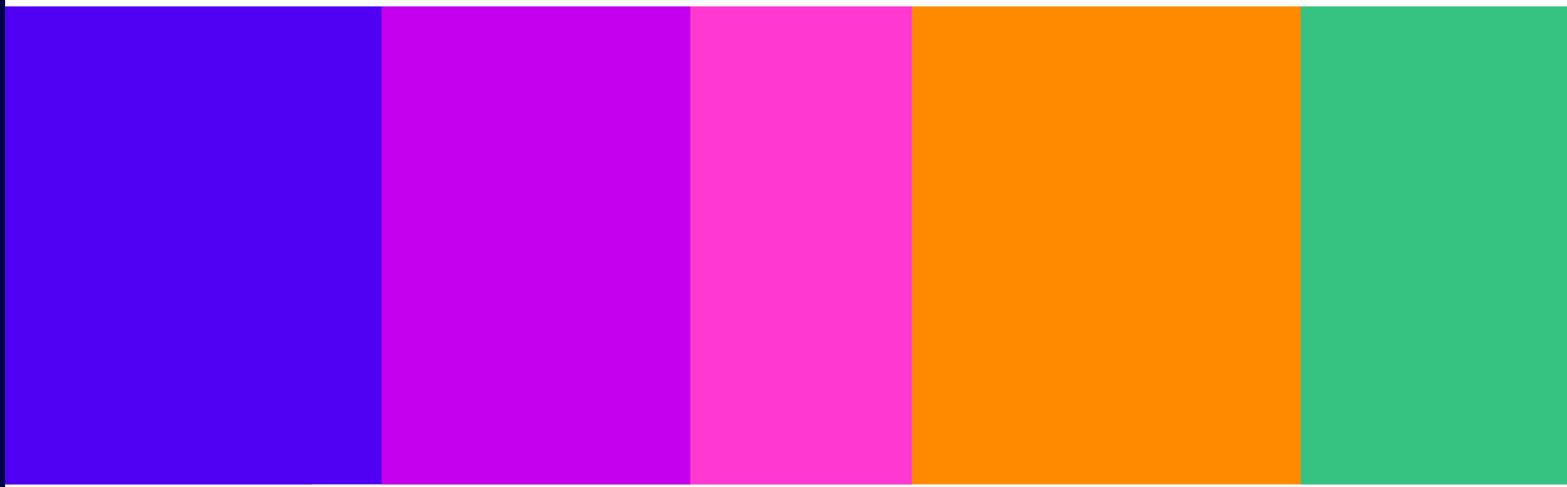
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Statutory notification under section 107(6) of the Communications Act 2003

## Consultation

Published: 10 January 2024

Closing date for responses: 10 February 2024



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# 1. Overview

- 1.1 The electronic communications code is a set of rights that are intended to assist providers of communications networks and/or systems of infrastructure. Operators to whom Ofcom applies the Code may:
- construct and maintain communications networks and infrastructure (such as ducts, cabinets and poles) on public highways without the need to obtain a street works licence to undertake such works;
  - construct communications infrastructure which is classified as ‘permitted developments’ under Town and Country Planning legislation (such as certain types of masts, poles and cabinets) without the need to apply for planning permission; and
  - in the event that agreement cannot be reached with the owner or occupier of private land, concerning the deployment of communications networks or infrastructure on private land to apply to the Court to impose an agreement which confers the Code right being sought by the operator or provides for the Code right to bind the landowner or occupier.
- 1.2 We consider applications for the grant of Code powers from providers of electronic communications networks and providers of systems of infrastructure (or both) with reference to the matters set out in section 107(4) of the Communications Act 2003.

## What we are proposing – in brief

We are proposing to apply the electronic communications code set out in Schedule 3A to the Communications Act 2003 to Dense Air Limited, whose registered company number is 10402747, for the purposes of the provision by it of an electronic communications network.

We invite comments on our proposal by 10/02/2024.

We will consider any responses to this consultation before reaching a final decision on whether to grant Code powers to Dense Air Limited.

## 2. Background

- 2.1 The electronic communications code (the Code) is set out in Schedule 3A to the Communications Act 2003 (the Act). It is designed to facilitate the installation and maintenance of electronic communications networks.<sup>1</sup> It confers rights on providers of such networks and on providers of systems of infrastructure to install and maintain apparatus on, under and over land and results in considerably simplified planning procedures.
- 2.2 Where the Code is applied in any person's case, it may be subject to restrictions and conditions set out in other legislation from time to time.<sup>2</sup>

### The application of the Code

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- 2.3 The Code only has effect in the case of a person to whom it is applied by a direction given by Ofcom (or, in the case of the Secretary of State or any Northern Ireland department, where the Secretary of State or that department is providing or proposing to provide an electronic communications network).<sup>3</sup>
- 2.4 The only purposes for which the Code may be applied in a person's case by a direction are:
- a) the purposes of the provision by him of an electronic communications network; or
  - b) the purposes of the provision by him of a system of infrastructure which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.<sup>4</sup>
- 2.5 A direction applying the Code to a person may take effect:
- a) in relation only to such places or localities as may be specified or described in the direction;
  - b) for the purposes only of the provision of such electronic communications network, or part of an electronic communications network, as may be so specified or described; or
  - c) for the purposes only of the provision of such system of infrastructure, or part of a system of infrastructure, as may be so specified or described.<sup>5</sup>

### Application process for applying the Code

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- 2.6 Ofcom must not give a direction applying the Code in any person's case except on an application made for the purpose by that person.<sup>6</sup>

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<sup>1</sup> "Electronic communications network" for the purposes of the Code has the same meaning as in section 32 of the Act.

<sup>2</sup> Section 109 of the Act – see the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553), as amended by the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2009 (SI 2009 No. 584), the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2013 (SI 2013 No. 1403) and the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2017 (SI 2017/753).

<sup>3</sup> Section 106(3)(b) of the Act.

<sup>4</sup> Section 106(4) of the Act.

<sup>5</sup> Section 106(5) of the Act.

<sup>6</sup> Section 107(1) of the Act.

- 2.7 Any such application must be made in accordance with the requirements for the time being in force 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.<sup>7</sup>

## Time limit for making a decision on applications for the Code

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- 2.8 Regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011<sup>8</sup> provides that, except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application. In other words, that time limit applies from the moment Ofcom receives an application that fully complies with the requirements described above.

## Statutory consultation process on proposal

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- 2.9 Before giving a direction applying the Code to the applicant in question, 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.<sup>9</sup>
- 2.10 Such a notification must contain the following<sup>10</sup>:
- a) a statement of Ofcom's proposal;<sup>11</sup>
  - b) a statement of Ofcom's reasons for that proposal;
  - c) a statement of the period within which representations may be made to Ofcom about the proposal (which period must end no less than 30 days after the day of the publication of the notification<sup>12</sup>).
- 2.11 Ofcom must publish a notification in such manner as Ofcom considers appropriate for bringing the notification to the attention of the persons who, in Ofcom's opinion, are likely to be affected by it.<sup>13</sup>
- 2.12 The notification published at Annex 5 to this document is a notification for such purposes and should be read in conjunction with the entirety of this document, including the reasons set out in Section 3.

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<sup>7</sup> Section 107(2) of the Act. For the current requirements, see the Notification under section 107(2) of the Communications Act 2003, dated 6 October 2003, at Annex B to the statement entitled 'The Granting of the Electronic Communications Code by the Director General of Telecommunications – A Statement issued by the Director General of Telecommunications', published on 10 October 2003

<sup>8</sup> SI 2011 No. 1210.

<sup>9</sup> Section 107(6) of the Act.

<sup>10</sup> Section 107(7) of the Act.

<sup>11</sup> Subject to sections 113(7) and 115(5) of the Act, the statement of Ofcom's proposal must contain a statement that Ofcom proposes to apply the code in the case of the person in question and set out any proposals of Ofcom to impose terms under section 106(5); see section 107(8) of the Act.

<sup>12</sup> Section 107(9) of the Act.

<sup>13</sup> Section 107(10) of the Act.

## Relevant considerations in making a decision (four factors)

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- 2.13 In considering whether to apply the Code in any person's case, Ofcom must have regard, in particular, to each of the following matters<sup>14</sup>:
- a) the benefit to the public of the electronic communications network or system of infrastructure by reference to which the Code is to be applied to that person;
  - b) the practicability of the provision of that network or system without the application of the Code;
  - c) the need to encourage the sharing of the use of electronic communications apparatus;
  - d) whether the person in whose case it is proposed to apply the Code will be able to meet liabilities arising as a consequence of the application of the Code in that person's case and any conduct of that person in relation to the matters with which the Code deals.
- 2.14 For the purposes of this process, those four factors rank equally with Ofcom's statutory duties under sections 3 and 4 of the Act.<sup>15</sup> Where appropriate, outside of those statutory considerations, we will also have regard to any additional factors that, in our opinion, are relevant to the particular application.

## Statutory duties

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### General duties

- 2.15 In carrying out its functions under the Act (which includes giving a direction to apply the Code), Ofcom's principal duty as set out in section 3 of the Act is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.16 In so doing, we are required to secure a number of specific objectives and to have regard to a number of matters set out in section 3. As to the prescribed specific statutory objectives in section 3(2), we consider that the objective of securing the availability throughout the UK of a wide range of electronic communications services is particularly relevant to this consultation.
- 2.17 In performing its duties, Ofcom is also required to have regard to a range of other considerations, which appear to us to be relevant in the circumstances. In this context, we consider that a number of such considerations are relevant, particularly:
- a) the desirability of encouraging investment and innovation in relevant markets; and
  - b) the desirability of encouraging the availability and use of high-speed data transfer services throughout the United Kingdom.
- 2.18 We have also had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, as well as the interest of consumers in respect of choice, price, quality of service and value for money.

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<sup>14</sup> Section 107(4) of the Act.

<sup>15</sup> Section 107(5) of the Act.

2.19 Ofcom has a wide measure of discretion in balancing its statutory duties and objectives. In so doing, we will take account of all relevant considerations, including any responses received during this consultation process, in reaching our conclusions.

## Specific duties in relation to certain regulatory functions

2.20 When carrying out certain functions such as giving a direction to apply the Code, section 4 of the Act requires us to act in accordance with the six requirements set out in that section.

2.21 In summary, these six requirements are:

- a) to promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- b) to promote the interests of all members of the public in the United Kingdom;
- c) to take account of the desirability of Ofcom's carrying out of its functions in a manner which, so far as practicable, does not favour one form of or means of providing electronic communications networks, services or associated facilities over another, i.e. to be technologically neutral;
- d) to encourage, to such extent as Ofcom considers appropriate for certain prescribed purposes, the provision of network access and service interoperability, namely securing efficiency and sustainable competition, efficient investment and innovation and the maximum benefit for customers of communications providers and of persons who make associated facilities available;
- e) to encourage compliance with certain standards as is necessary to facilitate service interoperability; facilitate end-to-end connectivity; facilitate the changing by end-users of their communications provider; facilitate the retention by end-users of their telephone numbers after a change of communications provider; and secure freedom of choice for the customers of communications providers.
- f) to promote connectivity and access to very high-capacity networks by members of the public and businesses in the United Kingdom.

2.22 We consider that the first, second, fourth and sixth of those requirements are of particular relevance to our proposal in this consultation and that no conflict arises in this regard with the specific objectives in section 3 which we have identified above as particularly relevant in this context.

## Impact assessment

2.23 Section 7 of the Communications Act requires us to carry out and publish an assessment of the likely impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom's activities.

2.24 More generally, impact assessments form part of good policy making and we therefore expect to carry them out in relation to a large majority of our proposals. We use impact assessments to help us understand and assess the potential impact of our policy decisions before we make them. They also help us explain the policy decisions we have decided to take and why we consider those decisions best fulfil our applicable duties and objectives in

the least intrusive way. Our impact assessment guidance sets out our general approach to how we assess and present the impact of our proposed decisions.<sup>16</sup>

- 2.25 The relevant duties in relation to the proposal on which we are consulting are set out above. As discussed in paragraph 2.13, these include the four factors which we are required to have particular regard to when considering whether to apply the Code in a person's case. We consider these are particularly relevant to our assessment of the impact of this proposal.
- 2.26 We expect this proposal to have an overall positive impact for citizens and consumers because the grant of Code powers will facilitate the deployment of an electronic communications network by the applicant as described in section 3.
- 2.27 We expect the deployment of such wireless technology networks to improve the quality of services available and help meet the growing needs of people and businesses for connectivity. Where providers expand their network coverage, we expect competition to fuel innovation and customer choice.
- 2.28 In section 3, we have also summarised the benefits which the applicant considers would be associated with the proposed network deployment.
- 2.29 Operators to whom the Code is applied have rights to deploy electronic communications apparatus in public highways, subject to certain conditions and restrictions attached to the Code, street works legislation and planning legislation. For completeness, we note that street works associated with the proposed network deployment may cause short term disruption to citizens. This could include street closures, traffic restrictions and noise associated with works to install electronic communications apparatus. There may also be a visual impact if the applicant deploys apparatus such as cabinets, poles and overhead lines.
- 2.30 In considering the potential impact of the proposal on which we are consulting, we have considered the following key options:
- a) give a direction to apply the Code to the Applicant; or
  - b) not to give such a direction.

## Equality impact assessment

- 2.31 We have given careful consideration to whether our proposal will have a particular impact on persons sharing protected characteristics (broadly including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents and political opinion in Northern Ireland), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998.<sup>17</sup>
- 2.32 When thinking about equality we think more broadly than persons that share protected characteristics identified in equalities legislation and think about potential impacts on various groups of persons (see paragraph 4.7 of our [impact assessment guidance](#))]

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<sup>16</sup> Ofcom, [Impact Assessment Guidance](#), July 2023.

<sup>17</sup> Further detail is set out in section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.

- 2.33 In particular, section 3(4) of the Communications Act also requires us to have regard to the needs and interests of specific groups of persons when performing our duties, as appear to us to be relevant in the circumstances. These include:
- the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection;
  - the needs of persons with disabilities, older persons and persons on low incomes; and
  - the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas.
- 2.34 We consider that our proposals may have a positive impact on specific groups of persons (including persons that share protected characteristics under the 2010 Act or the 1998 Act) differently to the general population. As noted in our impact assessment above, our proposal will facilitate the deployment of an electronic communications network by the applicant which we expect to have an overall positive impact on citizens. Specific groups may benefit more than the general population, depending on the locations that the applicant chooses to deploy its network. For example, the applicant may deploy its network in locations where those with protected characteristics are particularly represented or in urban or rural areas, which may help advance equality of opportunity in those areas.
- 2.35 In section 3, we have described the differential effects that we have identified. However, given the narrow scope of our proposal and that the locations where the applicant ultimately deploys its network are at its discretion, we have not sought to undertake a detailed assessment of these positive differential impacts.

# 3. Reasons for proposal

3.1 This section contains our reasons for proposing to apply the Code to Dense Air Limited.

## Factual matters

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### The Applicant and the Code powers applied for

3.2 On 11/07/2023 we received an application that meets the statutory requirements.<sup>18</sup>

3.3 The person seeking Code powers (the Applicant) is:

- Company name: Dense Air Limited
- Registered company number: 10402747
- Registered office: Atlas House, Third Avenue, Globe Business Park, Marlow, Buckinghamshire, SL7 1EY

3.4 The Applicant has applied to Ofcom for a direction applying Code powers under section 106(4)(a) of the Act. Namely, for the purposes of the provision by the Applicant of an electronic communications network.

### Description and location of the network for Code powers

3.5 The Applicant builds and operates shared wireless network technology and infrastructure for bringing 5G technology to selected locations in the UK, Europe and the USA. The Applicant seeks Code powers to facilitate the expansion of its 5G neutral host networks in selected locations throughout the UK.

3.6 In the UK, the Applicant deploys both on private estates and public areas that involve the local authority, where capable and dense 5G infrastructure is seen as an essential foundation for technological enhancement.

3.7 The Applicant uses its own O-RAN based Street Cells for the deployment, which are small, high bandwidth, base stations supporting neutral host operation, combined with radio front and backhaul in a small physical package that can be mounted on a lamppost or similar item of existing street furniture. This allows the deployment to simplify and minimize the disruption and inconvenience often associated with installing new street furniture and the laying of buried power and communication cables.

3.8 By providing a neutral host capable infrastructure to mobile network operators (MNOs) as well as for private use, the Applicant intends to encourage sharing of physical assets in the crowded streets to reduce intrusive construction while allowing the benefits of a densified radio coverage.

3.9 The Applicant has stated that its big data analytics and Artificial Intelligence platform identify where small cells can make the greatest impact at the cell edge. This aims to optimize the Applicant's ability to deploy a neutral host network on a highly targeted basis

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<sup>18</sup> Notification under Section 107(2) of the Communications Act 2003. Annex B to the statement entitled 'The Granting of the Electronic Communications Code by the Director General of Telecommunications – A Statement issued by the Director General of Telecommunications', published on 10 October 2003.

that enhances and extends each MNOs' existing services while avoiding interference with their macro networks.

## Analysis of the four factors

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3.10 As set out in paragraph 2.13 above, Ofcom must have regard to four factors when considering whether to apply the Code in any person's case.

### The benefit to the public of the electronic communications network by reference to which the Code is to be applied to the Applicant

- 3.11 The Applicant has stated that secure 5G neutral host networks promise enhanced, pervasive connectivity to support new uses, provide higher speeds and create business opportunities.
- 3.12 The Applicant considers that people and businesses would benefit from the improved coverage which will promote business growth and innovative new services such as various Internet of Things applications and densified mobile connectivity.
- 3.13 We expect the deployment of new 5G neutral host networks will improve the quality of services available and help meeting the growing needs of people and businesses for connectivity.
- 3.14 Where providers expand their network coverage, we expect competition to fuel innovation and customer choice.
- 3.15 We recognize that there is likely to be some level of disruption during deployment process of small cells such as potential concerns over aesthetics, noise and other issues. However, we consider that the network planned by the Applicant would have the potential to benefit the people and businesses in the long run in terms of bolstering 5G's reach and availability.

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

- 3.16 The Applicant has stated that it would not be practicable or viable for it to deploy the proposed network without Code powers because:
- The Applicant would run the risk of significant delay with respect to the deployment of its wireless network, especially in public spaces, as it would be required to engage with additional parties, and undertake additional processes, to implement its business plan.
  - The Applicant would have a greatly diminished bargaining position with respect to obtaining access to build and maintain its wireless network and infrastructure, which would have a consequential negative effect on the speed and cost of actioning its business plan.
  - The Applicant would be at a competitive disadvantage as most other providers of similar networks have received a direction to apply the Code.

- The Applicant considers that there are no alternative arrangements available to it that could aid the deployment of its wireless network and infrastructure and protect its interests in the same way as a direction that the Code applies to it.
- 3.17 We consider that the business case for a wireless network is generally dependent upon the level of costs of building the network and the timely provision and take-up of services. Without the application of the Code, the Applicant's costs would likely be higher, and the time taken to then provide services, longer. We consider that, together, these effects could impair the Applicant's business case for deploying its network.
- 3.18 We consider that the network planned by the Applicant would not be practicable without the application of the Code.

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

- 3.19 As previously noted, the applicant proposes to offer wholesale services to other operators on a neutral host basis, thereby minimizing the need for new infrastructure. It also intends to use existing poles and ducts where practical.
- 3.20 Network sharing will help to minimize the unnecessary proliferation of electronic communications apparatus, bringing environmental benefits aligned with long standing Government objectives in the public interest.
- 3.21 We consider that granting the Applicant Code powers would facilitate the sharing of the apparatus.

## 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

- 3.22 The Applicant has provided us with information, along with its application, that confirms that it understands its obligations to provide funds for liabilities under Regulation 16<sup>19</sup>, and confirmation by a director of the company that it will ensure that sufficient funds for these liabilities are in place (and will provide Ofcom with a certificate to this effect) if, and when this becomes necessary.
- 3.23 We consider that, based on this information, the Applicant would be able to meet its liabilities.

## Overall assessment

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- 3.24 In addition to our consideration of the four factors discussed above in paragraph 2.13, we consider that our proposal would secure or further the performance of our statutory duties under sections 3 and 4 of the Act.
- 3.25 In particular, we consider that our proposal would encourage investment and innovation by facilitating the provision of a wireless network by the Applicant. The provision of such a

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<sup>19</sup> Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003 No. 2553) (as amended).

network would promote access to very high capacity networks and encourage the availability of a wide range of communications services, including high-speed data transfer services. In our view this would also help support the future development, growth and availability of modern communications services in the public interest.

- 3.26 This proposal will improve the quality of services available and help meeting the growing connectivity needs of people and businesses, especially in underserved and rural areas.
- 3.27 We also consider that the Applicant's intended network could also enhance competition and customer choice as the Applicant proposes to offer retail services in competition with existing telecoms providers and to provide wholesale services to other telecoms providers.
- 3.28 The effect of implementing the proposal is likely to be low. Any costs to those affected by the Applicant's use of Code powers are likely to be outweighed by the benefits. On the other hand, the detrimental effect on the Applicant of a refusal to grant such powers (including to the practicability of its network roll-out) is likely to be significant.

## Proposal

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- 3.29 Having considered the Applicant's application for Code powers, we propose that the Code should have effect in its case for the provision by the Applicant of an electronic communications network in the United Kingdom.
- 3.30 We consider that our proposal is appropriate having regard to the considerations set out in section 107(4) of the Act. We consider that the performance of our statutory duties in sections 3 and 4 of the Act would be secured and furthered in relation to this proposal.
- 3.31 We will consider any responses we may receive by the closing date before making our decision as to whether we should give a direction applying the Code to the Applicant.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

# A1. Responding to this consultation

## How to respond

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- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 10 February 2024.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/proposal-to-apply-code-powers-to-dense-air-limited>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [ECCcodepowers@ofcom.org.uk](mailto:ECCcodepowers@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet. This email address is for this consultation only and will not be valid after 10 February 2024.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Electronic Communications Code Team  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
  - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex X. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact the ECC Team on 020 7981 3000, or by email to [ECCcodepowers@ofcom.org.uk](mailto:ECCcodepowers@ofcom.org.uk).

## Confidentiality

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- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. This can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on the Ofcom website at regular intervals during and after the consultation period.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A1.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

## Next steps

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- A1.16 Following this consultation period, Ofcom plans to publish a statement in winter 2024.
- A1.17 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

## Ofcom's consultation processes

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- A1.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex x.
- A1.19 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
- A1.21 Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

# A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

## Before the consultation

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A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. 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

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A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A2.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.

A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.

A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.

A2.6 If we are not able to follow any of these seven principles, we will explain why.

## After the consultation

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A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

# A3. Consultation coversheet

## Basic details

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Consultation title:

To (Ofcom contact): ECC Team

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

## Confidentiality

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Please tick below what part of your response you consider is confidential, giving your reasons why

- Nothing
- Name/contact details/job title
- Whole response
- Organisation
- Part of the response

If you selected 'Part of the response', please specify which parts:

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If you want part of your response, your name or your organisation not to be published, 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

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I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

# A4. Consultation questions

Question: Do you have any comments on our proposal to apply Code powers to the Applicant?

# A5. Statutory notification

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

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### Proposal to give a direction applying the electronic communications code

#### Proposal in this Notification

1. Ofcom hereby proposes, in accordance with section 107(6) of the Act, to give a direction under section 106(3) of the Act applying the Code to the Applicant.
2. The proposed direction applying the Code to the Applicant on the terms proposed is set out in the Schedule to this Notification.
3. Ofcom's reasons for giving the proposed direction are set out in the accompanying consultation document.

#### Ofcom's duties

4. In making this proposal, 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.

#### Making representations

5. Representations on this proposal may be made by email to [ECCcodepowers@ofcom.org.uk](mailto:ECCcodepowers@ofcom.org.uk), by no later than 5pm on 10 February 2024.

#### Interpretation

6. In this Notification—
  - (a) "Act" means the Communications Act 2003;
  - (b) "**Applicant**" means Dense Air Limited, whose registered company number is 10402747;
  - (c) "**Code**" means the electronic communications code set out in Schedule 3A to the Communications Act 2003; and
  - (d) "**Ofcom**" means the Office of Communications.
7. For the purpose of interpreting this Notification—
  - (a) headings and titles shall be disregarded; and
  - (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
8. The attached Schedule forms part of this Notification.

#### Signed

**Brian Potterill**

**Director of Mobile Network Strategy**

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

10 January 2024

## SCHEDULE

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

#### **Background**

1. Dense Air Limited, whose registered company number is 10402747, has applied to Ofcom for a direction applying the Code to it.
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 11 July 2023.
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 Dense Air Limited, 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 10/01/2024 Ofcom published a notification in accordance with section 107(6) of the Act of its proposal to give a direction applying the Code to Dense Air Limited. That notification invited representations to Ofcom by no later than 5pm on 10/02/2024.
6. *[Ofcom has considered every representation about the proposal made to it/Ofcom did not receive any representations about the proposal]*. 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**

7. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—
  - (a) the Code shall apply to Dense Air Limited (whose registered company number is 10402747) for the purposes of the provision by it of an electronic communications network; and
  - (b) that application of the Code shall have effect throughout the United Kingdom.
8. This Direction shall take effect on the day it is published.

#### **Interpretation**

9. In this Direction—
  - (a) “**Act**” means the Communications Act 2003;
  - (b) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
  - (c) “**Ofcom**” means the Office of Communications.
10. 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**

**Director of Mobile Network Strategy**

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

[date]