

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 January 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 5 pm on 10 February 2024
- 6.** Ofcom received two representations objecting to the proposal set out in consultation. The respondents' main concerns were about the potential health issues arising from weak electromagnetic fields that might be generated by communications equipment deployed by the Applicant (and other persons to whom Ofcom applies the Code), and about the visual impact of apparatus that the Applicant might deploy using the Code rights available to Code operators under the Act to deploy apparatus for electronic communications networks.
- 7.** Having considered the objections to the proposal, Ofcom concluded that the responses raised issues concerning Government policy relating to the rollout of advanced communications networks and the technology they employ. In particular, the Government's assessment of the safety of non-ionising radiation and Government policy concerning the Code rights available to Code operators. Ofcom has published an [advice page](#) on its website, which explains the regulation of EMFs and identifies the organisations responsible for ensuring that communications providers comply with the relevant regulations. Additionally, with regards to concerns on the visual impacts, Ofcom has no power to alter the statutory framework that sets out the Code. It is therefore unable to include consideration of the issues raised by the respondents, as part of its assessment of the application under the Code.
- 8.** When carrying out our duties and relevant assessments we take into account advice given by the UK Health Security Agency (UKHSA). In this case, that is advice relating to the safety of EMFs. UKHSA is an expert health body and have a statutory duty to provide advice to Government on any health effects that may be caused by exposure to EMFs. UKHSA's current advice is that EMFs levels should comply with the ICNIRP guidelines for limiting exposure. UKHSA considers that health-related

evidence and reviews support the view that health effects are unlikely to occur if exposures are below ICNIRP's internationally agreed guideline levels.

9. 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

10. 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.

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

Interpretation

12. 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.

13. 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

15 February 2024