

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

Proposal to give a direction applying the Electronic Communications Code to allpay Limited

1. The Office of Communications ("Ofcom") proposes to give a direction under section 106(3) of the Communications Act 2003 (the "Act") applying the electronic communications code (the "Code") to allpay Limited.
2. 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 the Numbering Team on 0300 123 3000 or by sending an email to numbering.information@ofcom.org.uk.
3. Representations on the proposal may be made to: Numbering Team, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA by not later than 5pm on **27 June 2011**.
4. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.
5. In this Notification, "allpay Limited" means allpay Limited (registered company number 02933191).



David Stewart
Competition Policy Director

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

26 May 2011

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

A Notification of this proposal was published on 26 May 2011

Whereas:

- (A) On 5 May 2011, allpay 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) 26 May 2011, Ofcom published a notification of their proposal to give a direction applying the Code to allpay Limited in accordance with section 107 of the Act;
- (C) Ofcom have considered 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 allpay Limited for the purposes of the provision by allpay 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;

“allpay Limited” means allpay Limited (registered company number 02933191);

“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.

David Stewart
Competition Policy Director

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

26 May 2011

Explanatory Statement

1.1 On 5 May 2011, allpay Limited applied for the Code for the purposes of the provision by it of an electronic communications network in the United Kingdom. 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 allpay 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 electronic communications services"*.

1.3 allpay Limited's application explained that it has started to provide broadband services to communities in predominantly rural areas via wireless technology. allpay Limited's service provision targets areas that other providers have failed to effectively serve. Ofcom is therefore of the view that its proposal to give Code powers to allpay Limited is consistent with both of the above Community requirements.

1.4 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

1.5 allpay Limited has initially focussed on providing broadband services to domestic customers but intends to offer services to businesses as well. As noted at paragraph 1.4 above, allpay Limited's service provision targets areas that other providers have failed to effectively serve. The broadband service is provided via wireless links which transmits through local high access points (primarily on churches) and is then received via subscriber module at the customer's premises. allpay Limited explained that the wireless technology that it utilises is capable of providing reliable links with connection speeds of up to 35 Mb.

1.6 allpay Limited currently provides broadband services in the Diocese of Hereford, including Herefordshire, South Shropshire and parts of Wales and Worcestershire. allpay Limited is also in discussions to extend into more of Wales and the East Midlands. Ultimately they intend to extend the service across the United Kingdom.

1.7 Ofcom considers that the network is likely to increase competition in the provision of broadband services and provide services in areas where there are currently few, if any, alternative providers. Ofcom therefore considers that the network will benefit the public.

The practicability of the provision of the network without the Code

1.8 allpay Limited explained that the need to seek planning permission would cause unnecessary costs and delays, and in particular in cases involving churches (which are key to allpay Limited's model) the process would be complicated and lengthy due to issues surrounding ownership. As a result, allpay Limited argued that it would be impractical, if not impossible, to expand its network without Code powers.

1.9 Ofcom considers that it should grant Code powers to allpay Limited and that, in doing so, allpay Limited would be better placed to deploy its broadband network.

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

1.10 At present allpay Limited does not share their infrastructure but would be willing to look into the possibility of doing so in the future.

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 allpay 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.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 27 June 2011**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/allpay/howtorespond/form>, 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 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email numbering.information@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

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

Numbering Team
Central Operations
2nd Floor
Riverside House
2A Southwark Bridge Road
London SE1 9HA

- A1.4 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.5 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex X. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Numbering Team on 0300 123 3000

Confidentiality

- A1.7 We believe 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.

- A1.8 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 that are marked as confidential, in order to meet legal obligations.
- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement in July 2011.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 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. 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, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 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

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 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 Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom 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. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 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 complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other 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

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 there is no separate annex, which parts?

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)?

DECLARATION

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 seeks to publish responses on receipt. 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)