

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

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

1. The Office of Communications (“Ofcom”) propose to give a direction under section 106(3) of the Communications Act 2003 (the “Act”) applying the electronic communications code (the “Code”) to Gigaclear 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 **11 April 2011**.
4. All confidential information should be clearly marked 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 Julia Fraser (julia.fraser@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).
5. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.
6. In this Notification, “Gigaclear Limited” means Gigaclear Limited (registered company number 07476617).



David Stewart
Competition Policy Director

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

10 March 2011

[Draft] 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 25 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’s case 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 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.

David Stewart
Competition Policy Director

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

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 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".

1.3 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.

1.4 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.

1.5 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

1.6 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 3rd party providers.

1.7 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.

1.8 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

1.9 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.

1.10 Gigaclear Limited believe that to efficiently and 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.

1.11 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.

1.12 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

1.13 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.

1.14 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

1.15 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.

How to respond

1.16 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on **11 April 2011**. In this case, Ofcom considers that it need not consult for ten weeks because this would delay provision of the services described which, as explained, are intended to benefit the public.

1.17 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), 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.

1.18 Please can you send your response to numbering.information@ofcom.org.uk

1.19 Responses may alternatively be posted or faxed 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
Tel: 0300 123 3000

Confidentiality

1.20 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.

1.21 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.

1.22 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

1.23 At the end of the consultation, subject to respondents' views, Ofcom proposes to grant Code powers to Gigaclear Limited shortly thereafter.

Further information

1.24 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 the Numbering Team using the contact details given above.

Ofcom's consultation processes

1.25 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.

1.26 Ofcom is required to allow representations to be made on notifications in relation to proposals to grant the Code for at least one month. Ofcom considers that this is a category 2 consultation (and this applies to Code applications more generally). A longer consultation period would delay rollout of networks and prevent the applicant from competing on a fair basis with Code operators.

1.27 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, whose views are less likely to be obtained in a formal consultation.

1.28 If you would like to discuss these issues or Ofcom's consultation processes more generally, you can alternatively contact Vicki Nash who is Ofcom's consultation champion:

Vicki Nash
Ofcom (Scotland)
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW
Tel: 0141 229 7401
Fax: 0141 229 7433
E-mail: vicki.nash@ofcom.org.uk

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 Numbering Team:

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)