

Direction under section 106(3) of the Communications Act 2003 applying the electronic communications code

Background

1. The Applicant has applied to Ofcom for a direction applying the Code to the Applicant.
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 8 August 2019.
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 the Applicant, 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 21 January 2020, Ofcom published, in accordance with section 107(6) of the Act, a notification of its proposal to give a direction applying the Code to the Applicant for the reasons set out in the consultation document accompanying that notification. That notification invited representations to Ofcom by no later than 5pm on 21 February 2020.
6. Ofcom received one response objecting to the proposal. The respondent was concerned that granting the Code powers would obviate the need for Aquind Limited to obtain relevant planning consents in connection with the installation of a power transmission link running from the south of England to Normandy in France (the Aquind Interconnector).
7. Having considered the objections raised, Ofcom has concluded that the conditions for granting Code powers have been met by the Applicant and it would be inappropriate to withdraw, withhold or delay the granting of it on the grounds stated by the respondent. Ofcom is only empowered to give a direction granting Code powers in relation to the provision of an electronic communications network. Ofcom has also set the scope of the Code powers to exclude the UK Aquind Interconnector Fibre which would be deployed in the Aquind Interconnector. The Applicant has indicated that it will seek development consent for this part of the electronic communication network under the Planning Act 2008.
8. 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 Community requirements in section 4 of the Act.

Decision

9. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—
 - (a) the Code shall apply to the Applicant for the purposes of the provision by the Applicant of part of an electronic communications network, namely, the

- Applicant's electronic communications network excluding the UK Aquind Interconnector Fibre, as defined in this direction; and
- (b) that application of the Code shall have effect throughout England.

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

Interpretation

11. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Applicant**” means Aquind Limited, whose registered company number is 06681477;
- (c) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (d) “**Ofcom**” means the Office of Communications.
- (e) “**UK Aquind Interconnector Fibre**” means the part of the Applicant's electronic communications network in England, which is deployed in the Applicant's marine and underground electric power transmission link that runs between the south of England and Normandy in France, and is subject to a Direction issued on 30 July 2018, by the Secretary of State for Business, Energy and Industrial Strategy, pursuant to section 35 of the planning Act 2008.

12. 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

Competition Policy Director

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

27 March 2020