

COMMUNICATIONS ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Networks, Services and the Radio Spectrum

Chapter 1: Electronic Communications Networks and Services

Section 87: Conditions about network access etc.

222. Sections 87 to 92 make provision about the subject matter of SMP services conditions. Where OFCOM have identified a provider of a public electronic communications network or a person who makes available associated facilities in connection with such a network as having SMP in a services market, they may impose such SMP conditions authorised by this section, as they consider appropriate. These may include conditions requiring the provider to confer entitlements on other providers regarding the provision of network access, the use of that network, and the availability of facilities. Such conditions may include provision for securing fairness and reasonableness in the process and should be set having taken into account the matters set out in *subsection (4)*. These include the feasibility of providing network access; the need to ensure effective long-term competition in the markets; the investment made by the person initially providing or making available the network or facility in respect of which an entitlement to network access is proposed; the technical and economic viability of installing and using facilities that would make the proposed network access unnecessary; intellectual property rights; and the availability of services throughout the European Union.
223. *Subsection (6)* provides that SMP service conditions may require a person with SMP to publish such information as OFCOM may direct for the purpose of securing transparency in relation to network access. They may require such a person not to discriminate in relation to any matter connected with network access. They may require such a person to publish the terms and conditions on which the provider will enter an access contract and to modify those terms and conditions.
- *an *access contract* is defined in *subsection (12)* as any contract for the provision, by a dominant provider, of network access, or of associated facilities made available in relation to a public electronic communications network.
224. *Subsection (7)* provides that OFCOM may set SMP services conditions obliging a dominant provider to maintain separate accounts for such different matters relating to network access or the availability of associated facilities as OFCOM may direct.
225. *Subsection (9)* provides that OFCOM may set SMP services conditions requiring a person with SMP to comply with price-controls, rules on cost-recovery and cost accounting systems in relation to matters connected with network access or the availability of associated facilities. OFCOM may also, by setting such conditions, direct the provider to adjust its prices.

*These notes refer to the Communications Act 2003
(c.21) which received Royal Assent on 17 July 2003*

226. This section, together with sections 88 and 89, implement Articles 8 to 13 of the Access Directive, Article 6(2) of the Authorisation Directive and Article 16(4) of the Framework Directive.