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STATUTORY INSTRUMENTS

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**1996 No. 3151**

**The Advanced Television Services Regulations 1996**

**PART III**

**CONDITIONAL ACCESS**

**Obligations of operators of conditional access services**

**11.**—(1) It shall be the duty of operators of conditional access services, irrespective of the means of transmission, who produce and market access services to digital television services—

- (a) to offer to all broadcasters, on a fair, reasonable and non-discriminatory basis, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers authorised by means of decoders administered by the service operators;
- (b) to keep separate financial accounts regarding their activity as conditional access providers.

(2) A digital television service may take advantage of the provisions in paragraph (1) above only if the services offered comply with the relevant Community obligations in force.

(3) For the purposes of the following provisions of this regulation—

- (a) the duty referred to in paragraph (1) above is referred to as the primary duty;
- (b) the duty to co-operate, provided for in paragraph (4) below is referred to as the supplemental duty;
- (c) the person upon whom the primary duty is imposed by paragraph (1) above or would be so imposed in the circumstances referred to in paragraph (5) below is referred to as the offeror; and
- (d) the person to whom the primary duty is owed as referred to in paragraph (9) below or would be so owed is referred to as the offeree.

(4) The offeror, subject to performance by the offeree of the operative condition, shall have the supplemental duty when requested so to do by the offeree to co-operate with him to ensure that the offeree is in a position to take reasonable advantage of the performance by the offeror of the primary duty.

(5) The circumstances in which the supplemental duty shall apply are that the offeror—

- (a) is for the time being subject to the primary duty; or
- (b) notwithstanding that the primary duty has not yet arisen, the offeror is making preparations to provide technical services—
  - (i) to another offeree; or
  - (ii) where the offeror is himself a broadcaster, to himself, if he intends to provide such services to any other offeree,

and the offeree has expressed an intention to use the technical services of the offeror.

(6) For the purposes of paragraph (5)(b)(ii) above, whether the offeror intends at any given time to provide technical services to any other offeree may be determined in accordance with the inferences to be drawn from his conduct and all the relevant circumstances of the case.

(7) Without prejudice to the generality of the supplemental duty, such duty includes the duty to disclose adequate and timely information concerning the conditional access system to the offeree as is reasonably sufficient in all the circumstances of the case to—

- (a) enable the offeree to take reasonable advantage of the performance of the primary duty; and
- (b) ensure that the offeree is not placed at a disadvantage when compared to other offerees or, where the offeror is a broadcaster, with the offeror himself.

(8) The operative condition is that the offeree has given the offeror an undertaking in writing that information supplied to the offeree pursuant to the supplemental duty shall be kept confidential and shall (together with all copies thereof) be returned to the offeror should the offeree no longer require that the primary duty be performed in relation to him.

(9) Each of the duties referred to in paragraphs (1) and (4) above is a duty owed to any person who may be affected by a breach of it and without prejudice to any other cause of action which may arise therefrom any breach of such duty which causes that person to sustain loss or damage shall be actionable in tort or, in Scotland, delict at the suit or instance of that person.