



# Telecommunications Act 1984

## 1984 CHAPTER 12

### PART II

#### PROVISION OF TELECOMMUNICATION SERVICES

##### *Modification of licences*

#### **12 Modification of licence conditions by agreement**

- (1) Subject to the following provisions of this section, the Director may modify the conditions of a licence granted under section 7 above.
- (2) Before making modifications under this section, the Director shall give notice—
  - (a) stating that he proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why he proposes to make the modifications ; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given by publication in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and, in the case of a licence granted to a particular person, by sending a copy of the notice to that person.
- (4) In the case of a licence granted to a particular person, the Director shall not make the modifications except with the consent of that person; and, in the case of a licence granted to all persons or to persons of a class, the Director shall not make the modifications unless either—
  - (a) no representations or objections are duly made by persons authorised by that licence to run telecommunication systems; or
  - (b) any representations or objections duly made by such persons are withdrawn.

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- (5) The Director shall also send a copy of a notice under subsection (2) above to the Secretary of State ; and if, within the time specified in the notice, the Secretary of State directs the Director not to make any modification, the Director shall comply with the direction.
- (6) The Secretary of State shall not give a direction under subsection (5) above unless—
  - (a) it appears to him that the modification should be made, if at all, under section 15 below ; or
  - (b) it appears to him to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom.
- (7) References in this section and in sections 13 to 15 below to modifications of the conditions of a licence do not include references to modifications of conditions relating to the application of the telecommunications code.

### **13 Licence modification references to Commission**

- (1) The Director may make to the Monopolies and Mergers Commission (in this Act referred to as " the Commission ") a reference which is so framed as to require the Commission to investigate and report on the questions—
  - (a) whether any matters which relate to the provision of telecommunication services or the supply of telecommunication apparatus by a person authorised by a licence under section 7 above to run a telecommunication system and which are specified in the reference operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of that licence.
- (2) The Director may, at any time, by notice given to the Commission vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and, subject to subsection (5) below, on receipt of such notice the Commission shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
  - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have ; and
  - (b) any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.
- (4) The Director shall publish particulars of a reference under this section, or of a variation of such a reference, in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it and, in the case of a licence granted to a particular person, shall send a copy of the reference or variation to that person.
- (5) The Director shall also send a copy of a reference under this section, or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 14 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Commission not to proceed

with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

- (6) The Secretary of State shall not give a direction under subsection (5) above unless it appears to him to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom.
- (7) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference under this section, to give to the Commission—
- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,
- and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.
- (8) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by section 3 above.
- (9) Sections 70 (time limit for report on merger reference) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973 (in this Act referred to as "the 1973 Act") and Part II of Schedule 3 to that Act (performance of functions of the Commission) shall apply in relation to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under that Act;
  - (b) the expression "merger reference" included a reference under this section;
  - (c) in the said section 70 references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
  - (d) in paragraph 11 of the said Schedule 3 the reference to section 71 of that Act were a reference to subsection (2) above; and
  - (e) paragraph 16(2) of that Schedule were omitted.
- (10) For the purposes of references under this section the Secretary of State shall appoint not less than three additional members of the Commission; and if any functions of the Commission in relation to any such reference are performed through a group, the chairman of the Commission shall select one, two or three of those additional members to be members of the group and the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the 1973 Act shall be reduced accordingly.

## **14 Reports on licence modification references**

- (1) In making a report on a reference under section 13 above, the Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating proper understanding of those questions and of their conclusions ;

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- (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have ; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) Where, on a reference under this section, the Commission conclude that any person who is authorised by the licence to run a telecommunication system is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest ; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.
- (3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Commission on references under section 13 above as it applies to reports of the Commission under that Act.
- (4) A report of the Commission on a reference under section 16 above shall be made to the Director.
- (5) On receiving such a report, the Director—
- (a) shall send a copy of the report to the Secretary of State and, in the case of a licence granted to a particular person, to that person ; and
  - (b) subject to any direction given under subsection (6) below, shall publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 34 days beginning with the day on which he receives the copy of the report, direct the Director to exclude that matter from the report as published under subsection (5) above.

## **15 Modification of licence conditions following report**

- (1) Where a report of the Commission on a reference under section 13 above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
  - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
  - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence; and
  - (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this section, make such modifications of the conditions of the licence as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
  - (a) stating that he proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why he proposes to make the modifications ; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given by publication in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and, in the case of a licence granted to a particular person, by sending a copy of the notice to that person.
- (5) The Director shall also send a copy of a notice under subsection (3) above to the Secretary of State; and if, within the time specified in the notice, the Secretary of State directs the Director not to make any modification the Director shall comply with the direction.
- (6) The Secretary of State shall not give a direction under subsection (5) above unless it appears to him requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside the United Kingdom.