



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 1

#### ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

##### *Access-related conditions*

#### **74 Specific types of access-related conditions**

- (1) The conditions that may be set by virtue of section 73(2) include conditions which, for the purpose of securing end-to-end connectivity for the end-users of public electronic communications services provided by means of a series of electronic communications networks—
  - (a) impose obligations on a person controlling network access to any of those networks; and
  - (b) require the interconnection of the networks.

[<sup>F1</sup>(1A) The conditions that may be set by virtue of section 73(2) also include conditions which impose such obligations on a person controlling network access to customers as OFCOM consider necessary for the purpose of securing service interoperability.]

- (2) The conditions that may be set by virtue of section 73(2) also include such conditions imposing obligations on a person providing facilities for the use of application programme interfaces or electronic programme guides as OFCOM consider to be necessary for securing—
  - (a) that persons are able to have access to such programme services provided in digital form as OFCOM may determine; and
  - (b) that the facility for using those interfaces or guides is provided on terms which—

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**Changes to legislation:** *Communications Act 2003, Section 74 is up to date with all changes known to be in force on or before 23 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (i) are fair and reasonable; and
- (ii) do not involve, or tend to give rise to, any undue discrimination against any person or description of persons.

[<sup>F2</sup>(2A) The conditions that may be set by virtue of section 73(2) also include conditions imposing on a person who provides an electronic communications network that includes a line or associated facility to which this subsection applies, or who owns such a line or associated facility, obligations for the purposes of giving to other persons such entitlements as OFCOM may from time to time direct as respects the availability and use of the line or associated facility in cases where OFCOM are satisfied that it would be economically inefficient or physically impracticable for those other persons to replicate the line or associated facility.

(2B) Subsection (2A) applies—

- (a) to a line or associated facility that is—
  - (i) in a building, or
  - (ii) between the network termination point as determined by OFCOM and the first concentration or distribution point as so determined; and
- (b) in a case where OFCOM consider, having regard where applicable to any analysis of a services market under section 79, that obligations imposed by virtue of paragraph (a) will not in their opinion sufficiently address high and non-transitory economic or physical barriers to replication which underlie an existing or emerging market situation significantly limiting competitive outcomes for end-users, to a line or associated facility that is outside a building beyond the first concentration or distribution point to a point determined by OFCOM to be the closest point to end-users that is capable of hosting a sufficient number of end-user connections to be commercially viable for those seeking access.

(2C) OFCOM may not apply a condition authorised by virtue of subsection (2B)(b) to a person providing an electronic communications network if—

- (a) the network concerned is not publicly funded and the person providing the network makes available a viable and similar alternative means of reaching end-users by providing any undertaking with access to a very high capacity network on fair, non-discriminatory and reasonable terms and conditions; or
- (b) the obligations would compromise the economic or financial viability of the bringing of a new network into operation.

(2D) The conditions authorised by subsection (2A) may include provision—

- (a) for securing fairness and reasonableness in the way in which requests for entitlements are made and responded to;
- (b) for securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions;
- (c) requiring the person to whom the condition applies (“the relevant provider”) not to discriminate unduly against particular persons, or against a particular description of persons, in relation to matters connected with the entitlements mentioned in subsection (2A);
- (d) requiring the relevant provider to publish, in such manner as OFCOM may from time to time direct, all such information as they may direct for the purpose of securing transparency in relation to such matters;
- (e) requiring the relevant provider to publish, in such manner as OFCOM may from time to time direct, the terms and conditions on which the relevant

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provider is willing to enter into a contract giving the entitlements mentioned in subsection (2A);

- (f) requiring the terms and conditions on which the relevant provider is willing to enter into such a contract to include such terms and conditions as may be specified or described in the condition;
- (g) requiring the relevant provider to make such modifications as OFCOM may direct of any offer by that provider which sets out the terms and conditions on which that provider is willing to enter into such a contract;
- (h) imposing rules about the apportionment and recovery of costs.]

(3) In this section—

“application programme interface” means a facility for allowing software to make use, in connection with any of the matters mentioned in subsection (4), of facilities contained in other software;

“electronic programme guide” means a facility by means of which a person has access to any service which consists of—

- (a) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services; and
- (b) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

“end-to-end connectivity” means the facility—

- (a) for different end-users of the same public electronic communications service to be able to communicate with each other; and
- (b) for the end-users of different such services to be able, each using the service of which he is the end-user, to communicate with each other.

[<sup>F3</sup>“line” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or adapted for use in connection with the provision of any electronic communications network or electronic communications service.]

(4) The matters mentioned in subsection (3), in the definition of “application programme interface”, are—

- (a) allowing a person to have access to programme services;
- (b) allowing a person, other than a communications provider or a person who makes associated facilities available, to make use of an electronic communications network by means of which a programme service is broadcast or otherwise transmitted;
- (c) allowing a person to become the end-user of a description of public electronic communications service.

(5) This section is not to be construed as restricting the provision that may be made under section 73(2).

#### Textual Amendments

- F1** S. 74(1A) inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 39** (with Sch. 3 para. 2)
- F2** S. 74(2A)-(2D) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), **Sch. 1 para. 31(2)**

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**F3** Words in s. 74(3) inserted (21.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(2), [Sch. 1 para. 31\(3\)](#)

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**Commencement Information**

- I1** S. 74 in force at 25.7.2003 for specified purposes by [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))
- I2** S. 74 in force at 29.12.2003 in so far as not already in force by [S.I. 2003/3142](#), [art. 3\(2\)](#) (with art. 11)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by [S.I. 2003/3142 art. 1\(3\)](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/1492 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by [S.I. 2004/697 art. 2](#)
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by [S.I. 2004/545 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by [2013 c. 22 Sch. 9 para. 52](#)
- s. 148A and cross-heading inserted by [2022 c. 46 s. 73\(2\)](#)
- s. 368E(5)(d)(e) inserted by [2017 c. 30 s. 94\(3\)](#)
- s. 402(2A)(za)(zb) inserted by [2022 c. 46 Sch. para. 2](#)
- Sch. 3A para. 21(6) inserted by [2022 c. 46 Sch. para. 3\(5\)\(b\)](#)
- Sch. 3A para. 37(3)(aza) inserted by [2022 c. 46 Sch. para. 3\(9\)](#)
- Sch. 3A para. 84(1)(aza) inserted by [2022 c. 46 Sch. para. 3\(10\)](#)
- Sch. 3A para. 103(1)(ca) inserted by [2022 c. 46 s. 70](#)
- Sch. 3A para. 119A inserted by [2022 c. 46 s. 72](#)
- Sch. 3A Pt. 4ZA inserted by [2022 c. 46 s. 67\(1\)](#)