



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

SMP services conditions: subject-matter

91 Conditions about regulation of services etc. for end-users

(1) Where—

- (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market (“the relevant market”),
- (b) the relevant market is one for the end-users of public electronic communications services that are available in that market, and
- (c) it appears to OFCOM that the test in subsection (2) is satisfied in the case of that provider,

they shall set, and apply to that provider, such SMP conditions authorised by this section as they consider appropriate.

(2) That test is that OFCOM are unable, by the setting of conditions of the sorts specified in subsection (3), to perform, or fully to perform, their duties under section 4 in relation to the market situation in the relevant market.

(3) The sorts of conditions referred to in subsection (2) are—

- (a) access-related conditions; and
- (b) SMP conditions authorised or required by sections 87 to [F189] .

Changes to legislation: *Communications Act 2003, Section 91 is up to date with all changes known to be in force on or before 17 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*

- (4) The reference in subsection (2) to the market situation in the relevant market is a reference to the situation revealed by such market analyses of that market as may have been carried out for the purposes of this Chapter.
- (5) The SMP conditions authorised by this section are conditions imposing on the dominant provider such regulatory controls as OFCOM may from time to time direct in relation to the provision by that provider of any public electronic communications service to the end-users of that service.
- (6) Where OFCOM set a condition which is authorised by this section and imposes regulatory control on tariffs or other matters to which costs are relevant, they shall also set, and apply to the dominant provider, an SMP condition which requires him, to the extent that they consider it appropriate—
- (a) to use such cost accounting systems as may be determined by them;
 - (b) to have the use of those systems audited annually by a qualified auditor; and
 - (c) to publish an annual statement about compliance by the dominant provider with the obligations imposed by virtue of paragraph (a).
- ^{F2}(7)
- [^{F3}(8) In this section “qualified auditor” means a person who—
- (a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, and
 - (b) if the appointment to carry out such auditing as is mentioned in subsection (6) (b) were an appointment as a statutory auditor, would not be prohibited from acting by section 1214 of that Act (independence requirement).]

Textual Amendments

- F1** Word in s. 91(3)(b) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 52(a)** (with Sch. 3 para. 2)
- F2** S. 91(7) omitted (26.5.2011) by virtue of [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 52(b)** (with Sch. 3 para. 2)
- F3** S. 91(8) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 30(4)** (with arts. 6, 11, 12)

Commencement Information

- I1** S. 91 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. 91 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)

Changes to legislation:

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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\(1\)](#)