



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

Access-related conditions

73 Permitted subject-matter of access-related conditions

- (1) The only conditions that may be set under section 45 as access-related conditions are those authorised by this section.
- (2) Access-related conditions may include conditions relating to the provision of such network access and service interoperability as appears to OFCOM appropriate for the purpose of securing—
 - (a) efficiency on the part of communications providers and persons making associated facilities available;
 - (b) sustainable competition between them; and
 - (c) the greatest possible benefit for the end-users of public electronic communications services.
- (3) Access-related conditions may include conditions appearing to OFCOM to be appropriate for securing that persons to whom the electronic communications code applies participate, in cases where there are no viable alternative arrangements that may be made, in arrangements for—
 - (a) sharing the use of electronic communications apparatus; and
 - (b) apportioning and making contributions towards costs incurred in relation to shared electronic communications apparatus.

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- (4) Access-related conditions may include one which—
- (a) is of a technical or operational nature;
 - (b) appears to OFCOM to be appropriate for securing the proper operation of an electronic communications network in compliance with any SMP services condition falling within section 87(3); and
 - (c) is applied to—
 - (i) a person who is required by such an SMP services condition to confer any entitlements to network access; or
 - (ii) a person on whom such an entitlement is or may be conferred in pursuance of a requirement imposed by such an SMP services condition.
- (5) Access-related conditions may include conditions containing any provision required by section 75(2).

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.
- (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—
 - (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.
- (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—

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- (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.
- (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).

75 Conditional access systems and access to digital services

- (1) It shall be the duty of OFCOM, when setting a condition falling within section 73(4), to ensure that it contains all such provision as they consider appropriate for the purpose of taking account of the relevant international standards.
- (2) It shall be the duty of OFCOM to ensure—
- (a) that access-related conditions are applied to every person who provides a conditional access system in relation to a protected programme service; and
 - (b) that those conditions make all such provision as is required by the provision contained from time to time in Part I of Annex I to the Access Directive (conditions relating to access to digital programme services).
- (3) In this section—
- “conditional access system” means any system, facility, arrangements or technical measure under or by means of which access to programme services requires—
- (a) a subscription to the service or to a service that includes that service; or
 - (b) an authorisation to view it, or to listen to it, on a particular occasion;
- “protected programme service” means a programme service the programmes included in which cannot be viewed or listened to in an intelligible form except by the use of a conditional access system.

76 Modification and revocation of conditions imposed under s. 75

- (1) This section applies in the case of conditions falling within section 75(2) which have been set by OFCOM in relation to a particular person (“the system provider”).
- (2) OFCOM must not give effect to a proposal to modify or revoke any of the conditions unless—
- (a) they have carried out an analysis for the purpose of determining in accordance with this Chapter whether that person is or remains a person on whom SMP services conditions are capable of being imposed;
 - (b) they have determined in consequence of that analysis that he is not; and

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- (c) they are satisfied that the modification or revocation will not have an adverse effect on any or all of the matters mentioned in subsection (3).
- (3) Those matters are—
- (a) the accessibility to any persons of services that are for the time being included in the list of must-carry services in section 64;
 - (b) the prospects for effective competition in the market for programme services provided by being broadcast or otherwise transmitted in digital form; and
 - (c) the prospects for effective competition in the markets for conditional access systems and other associated facilities.
- (4) In this section “conditional access system” has the same meaning as in section 75.