



# Communications Act 2003

## 2003 CHAPTER 21

### PART 3

#### TELEVISION AND RADIO SERVICES

### CHAPTER 4

#### REGULATORY PROVISIONS

##### *Competition between licensed providers etc.*

#### **316 Conditions relating to competition matters**

- (1) The regulatory regime for every licensed service includes the conditions (if any) that OFCOM consider appropriate for ensuring fair and effective competition in the provision of licensed services or of connected services.
- (2) Those conditions must include the conditions (if any) that OFCOM consider appropriate for securing that the provider of the service does not—
  - (a) enter into or maintain any arrangements, or
  - (b) engage in any practice,which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.
- (3) A condition imposed under this section may require a licence holder to comply with one or both of the following—
  - (a) a code for the time being approved by OFCOM for the purposes of the conditions; and
  - (b) directions given to him by OFCOM for those purposes.
- (4) In this section—

---

*Status: This is the original version (as it was originally enacted).*

---

“connected services”, in relation to licensed services, means the provision of programmes for inclusion in licensed services and any other services provided for purposes connected with, or with the provision of, licensed services; and

“licensed service” means a service licensed by a Broadcasting Act licence.

### **317 Exercise of Broadcasting Act powers for a competition purpose**

- (1) This section applies to the following powers of OFCOM (their “Broadcasting Act powers”)—
  - (a) their powers under this Part of this Act and under the 1990 Act and the 1996 Act to impose or vary the conditions of a Broadcasting Act licence;
  - (b) every power of theirs to give an approval for the purposes of provision contained in the conditions of such a licence;
  - (c) every power of theirs to give a direction to a person who is required to comply with it by the conditions of such a licence; and
  - (d) every power of theirs that is exercisable for the purpose of enforcing an obligation imposed by the conditions of such a licence.
- (2) Before exercising any of their Broadcasting Act powers for a competition purpose, OFCOM must consider whether a more appropriate way of proceeding in relation to some or all of the matters in question would be under the Competition Act 1998 (c. 41).
- (3) If OFCOM decide that a more appropriate way of proceeding in relation to a matter would be under the Competition Act 1998, they are not, to the extent of that decision, to exercise their Broadcasting Act powers in relation to that matter.
- (4) If OFCOM have decided to exercise any of their Broadcasting Act powers for a competition purpose, they must, on or before doing so, give a notification of their decision.
- (5) A notification under subsection (4) must—
  - (a) be given to such persons, or published in such manner, as appears to OFCOM to be appropriate for bringing it to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by their decision; and
  - (b) must describe the rights conferred by subsection (6) on the persons affected by that decision.
- (6) A person affected by a decision by OFCOM to exercise any of their Broadcasting Act powers for a competition purpose may appeal to the Competition Appeal Tribunal against so much of that decision as relates to the exercise of that power for that purpose.
- (7) Sections 192(3) to (8), 195 and 196 apply in the case of an appeal under subsection (6) as they apply in the case of an appeal under section 192(2).
- (8) The jurisdiction of the Competition Appeal Tribunal on an appeal under subsection (6) excludes—
  - (a) whether OFCOM have complied with subsection (2); and
  - (b) whether any of OFCOM’s Broadcasting Act powers have been exercised in contravention of subsection (3);

and, accordingly, those decisions by OFCOM on those matters fall to be questioned only in proceedings for judicial review.

---

*Status: This is the original version (as it was originally enacted).*

---

- (9) For the purposes of this section a power is exercised by OFCOM for a competition purpose if the only or main reason for exercising it is to secure that the holder of a Broadcasting Act licence does not—
- (a) enter into or maintain arrangements, or
  - (b) engage in a practice,
- which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.
- (10) Nothing in this section applies to—
- (a) the exercise by OFCOM of any of their powers under sections 290 to 294 or Schedule 11;
  - (b) the exercise by them of any power for the purposes of any provision of a condition included in a licence in accordance with any of those sections;
  - (c) the exercise by them of any power for the purpose of enforcing such a condition.
- (11) In subsection (9) “connected services” and “licensed service” each has the same meaning as in section 316.
- (12) References in this section to the exercise of a power include references to an exercise of a power in pursuance of a duty imposed on OFCOM by or under an enactment.

### **318 Review of powers exercised for competition purposes**

- (1) It shall be the duty of OFCOM, at such intervals as they consider appropriate, to carry out a review of so much of each of the following as has effect for a competition purpose—
- (a) every code made or approved by them under or for the purposes of a broadcasting provision;
  - (b) the guidance issued by them under or for the purposes of broadcasting provisions; and
  - (c) every direction given by them under or for the purposes of a broadcasting provision.
- (2) Before modifying or revoking, or withdrawing their approval from, anything which is subject to periodic review under this section, OFCOM must consult such persons as they consider appropriate.
- (3) Subsection (2) applies irrespective of whether the modification, revocation or withdrawal is in consequence of a review under this section.
- (4) For the purposes of this section a provision has effect for a competition purpose to the extent that its only or main purpose is to secure that the holder of a Broadcasting Act licence does not—
- (a) enter into or maintain arrangements, or
  - (b) engage in a practice,
- which OFCOM consider, or would consider, to be prejudicial to fair and effective competition in the provision of licensed services or of connected services.
- (5) In this section “broadcasting provision” means—
- (a) a provision of this Part of this Act, of the 1990 Act or of the 1996 Act, or
  - (b) any provision of a Broadcasting Act licence,

---

*Status: This is the original version (as it was originally enacted).*

---

other than provision contained in any of sections 290 to 294 of this Act or Schedule 11 to this Act.