



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

SMP conditions: procedure

78 Circumstances required for the setting of SMP conditions

- (1) For the purposes of this Chapter a person shall be taken to have significant market power in relation to a market if he enjoys a position which amounts to or is equivalent to dominance of the market.
- [^{F1}(2) References in this section to dominance of a market are to be construed, so far as it is appropriate to do so for the purposes of this Chapter, in the same way as the reference in section 18(1) of the Competition Act 1998 to a dominant position in a market.]
- (3) A person is to be taken to enjoy a position of dominance of a market if he is one of a number of persons who enjoy such a position in combination with each other.
- (4) A person or combination of persons may also be taken to enjoy a position of dominance of a market by reason wholly or partly of his or their position in a closely related market if the links between the two markets allow the market power held in the closely related market to be used in a way that influences the other market so as to strengthen the position in the other market of that person or combination of persons.
- [^{F2}(5)

Changes to legislation: Communications Act 2003, Cross Heading: SMP conditions: procedure is up to date with all changes known to be in force on or before 12 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

Textual Amendments

- F1** S. 78(2) substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 23(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** S. 78(5) omitted (21.12.2020) by virtue of [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. 34(3)**

Commencement Information

- I1** S. 78 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. 78 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)

79 Market power determinations

- (1) Before making a market power determination, OFCOM must—
 - (a) identify (by reference, in particular, to area and locality) the markets which in their opinion are the ones which in the circumstances of the United Kingdom are the markets in relation to which it is appropriate to consider whether to make the determination; and
 - (b) carry out an analysis of the identified markets.

[^{F3}(1A) In identifying or analysing a services market for the purposes of this Chapter, OFCOM must conduct a forward-looking assessment of the market, taking into account expected or foreseeable developments that may affect competition in the market.]

^{F4}(2)

[^{F5}(2ZA) In identifying or analysing a services market for the purposes of this Chapter, OFCOM may have regard to EECC materials relating to market identification and analysis.]

[^{F6}(2A) In determining whether to identify a market for the purpose of considering whether to make a market power determination, OFCOM must consider whether the criteria in subsection (2B) are met; and OFCOM may not identify that market for that purpose unless they consider that the criteria are met.

- (2B) Those criteria are—
 - (a) that high and non-transitory structural, legal or regulatory barriers to entry are present;
 - (b) that there is a market structure which, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry, does not tend towards effective competition within such period as OFCOM determine to be appropriate in relation to the review;
 - (c) that competition law alone is insufficient adequately to address the identified market failure.

[In considering whether to make or revise a market power determination in relation to ^{F7}(2BA) a services market, OFCOM may have regard to EECC materials relating to market analysis or the determination of what constitutes significant market power.]

^{F8}(2C)

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^{F4}(3)

(4) The way in which—

- (a) a market is to be identified for the purposes of this section, or
- (b) a market power determination is to be made,

is by the publication of a notification containing the identification or determination.

(5) Notifications for the purposes of subsection (4)—

- (a) may be given separately;
- (b) may be contained in a single notification relating to both the identification of a market and the making of a market determination in relation to that market; or
- (c) may be contained in a single notification under section 48(1) with respect to the setting or modification of an SMP condition and either—
 - (i) the making of the market power determination by reference to which OFCOM set or modify that condition; or
 - (ii) the making of that market power determination and the identification of the market in relation to which they make that determination.

(6) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by the matters notified.

[^{F9}(6A) In this section “EECC materials” means recommendations or guidelines published by the European Commission, and guidelines published by BEREC, under the Framework Directive or the EECC Directive (including those published after IP completion day).]

^{F4}(7)

Textual Amendments

- F3** S. 79(1A) inserted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 24(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** S. 79(2)(3)(7) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 24(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** S. 79(2ZA) inserted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(3)(a), **Sch. 1 para. 73(2)**
- F6** S. 79(2A)-(2C) 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. 35**
- F7** S. 79(2BA) inserted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(3)(a), **Sch. 1 para. 73(3)**
- F8** S. 79(2C) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(3)(a), **Sch. 1 para. 73(4)**

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- F9** S. 79(6A) inserted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(3)(a), **Sch. 1 para. 73(5)**

Commencement Information

- I3** S. 79 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))
- I4** S. 79 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)

80 Proposals for identifying markets and for market power determinations

[^{F10}(1) Where section 80A applies, OFCOM must comply with the applicable requirements of that section ^{F11}... before—

- (a) identifying a market for the purposes of making a market power determination, or
- (b) making a market power determination.

(1A) Where section 80A does not apply because of subsection (2) of that section—

- (a) any identification of a market or market power determination must be temporary; and
- (b) the notification published under section 79(4) containing the identification or determination must state the period for which the identification or determination is to have effect.

(1B) Where OFCOM propose to extend or make permanent any such temporary identification or determination—

- (a) [^{F12}section 80A does] not apply in relation to the proposal; ^{F13}...
- ^{F13}(b)]

^{F14}(7)

Textual Amendments

- F10** S. 80(1)(1A)(1B) substituted for s. 80(1)-(6) (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 42(a)** (with Sch. 3 paras. 2, 11)
- F11** Words in s. 80(1) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 25(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in s. 80(1B)(a) substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 25(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** S. 80(1B)(b) and word omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 25(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F14** S. 80(7) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 25(4)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I5** S. 80 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))

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I6 S. 80 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**)

[^{F15}80A. [^{F16}C Consultation] for market identifications and market power determinations

- (1) This section applies where—
 - (a) OFCOM propose—
 - (i) to identify a market for the purposes of making a market power determination; or
 - (ii) to make a market power determination; and
 - (b) (in the case of a services market) the proposed identification or determination is in OFCOM’s opinion likely to result in the setting, modification or revocation of SMP services conditions that will have a significant impact on the market.
- (2) But this section does not apply where ^{F17}... in OFCOM’s opinion—
 - (a) there are exceptional circumstances; and
 - (b) there is an urgent need to act in order to safeguard competition and to protect the interests of consumers.
- (3) OFCOM must publish a notification of what they are proposing to do.
- (4) Notifications for the purposes of subsection (3)—
 - (a) may be given separately;
 - (b) may be contained in a single notification relating to both the identification of a market and the making of a market power determination in relation to that market; or
 - (c) may be contained in a single notification under section 48A(3) with respect to the setting or modification of an SMP condition and either—
 - (i) the making of the market power determination by reference to which OFCOM are proposing to set or modify that condition; or
 - (ii) the making of that market power determination and the identification of the market in relation to which they are proposing to make that determination.
- (5) A notification under this section relating to a proposal to identify a market or to make a market power determination must—
 - (a) state that OFCOM are proposing to identify that market or to make that market power determination;
 - (b) set out the effect of the proposal;
 - (c) give their reasons for making the proposal; and
 - (d) specify the period within which representations may be made to OFCOM about their proposal.
- (6) That period must be a period of not less than [^{F18}30 days] after the day of the publication of the notification.
- (7) But where OFCOM are satisfied that there are exceptional circumstances justifying the use of a shorter period, the period specified as the period for making representations may be whatever shorter period OFCOM considers reasonable in those circumstances.
- (8) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the contents of the notification to the

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attention of the persons who, in OFCOM’s opinion, are likely to be affected by the matters notified.

(9) OFCOM must—

- (a) consider every representation about the proposal made to them during the period specified in the notification; and
- (b) have regard to every international obligation of the United Kingdom (if any) which has been notified to them for the purposes of this paragraph by the Secretary of State.

(10) ^{F19}...[OFECOM may then give effect to ^{F20}the proposal], with any modifications that appear to OFCOM to be appropriate.]

Textual Amendments

- F15** Ss. 80A, 80B inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 43** (with Sch. 3 paras. 2, 11)
- F16** Word in s. 80A heading substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 26(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F17** Words in s. 80A(2) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 26(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in s. 80A(6) substituted (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. 36**
- F19** Words in s. 80A(10) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 26(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in s. 80A(10) substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 26(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

^{F21}**80B. EU consultation for market identifications and market power determinations**

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Textual Amendments

- F21** S. 80B omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 27**; 2020 c. 1, Sch. 5 para. 1(1)

^{F22}**81 Delivery of copies of notifications under sections 79 and 80A**

(1) OFCOM must send to the Secretary of State a copy of every notification published under section 79(4) or 80A(3).

^{F23}(2)

^{F23}(3)

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^{F23}(4)]

Textual Amendments

- F22** S. 81 substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 44** (with Sch. 3 paras. 2, 11)
- F23** S. 81(2)-(4) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 28**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I7** S. 81 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))
- I8** S. 81 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)

^{F24}**82 European Commission’s powers in respect of proposals**

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Textual Amendments

- F24** S. 82 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. 45** (with Sch. 3 paras. 2, 11)

Commencement Information

- I9** S. 82 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))
- I10** S. 82 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)

^{F25}**83 Special rules for transnational markets**

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Textual Amendments

- F25** S. 83 omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 29**; 2020 c. 1, Sch. 5 para. 1(1)

84 Review of services market identifications and determinations

- (1) This section applies where OFCOM have identified and analysed a services market for the purposes of making a market power determination.
- (2) OFCOM [^{F26}must, when required to do so by section 84A and at such other times as they may consider appropriate,] carry out further analyses of the identified market for one or both of the following purposes—
 - (a) reviewing market power determinations made on the basis of an earlier analysis;

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- (b) deciding whether to make proposals for the modification of SMP conditions set by reference to a market power determination made on such a basis.

^{F27}(3)

- (4) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they must revoke every SMP services condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.
- (5) Before carrying out a further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out an earlier analysis.
- (6) Where, on such a review, OFCOM conclude that the appropriate markets have changed—
- (a) they must identify the markets they now consider to be the appropriate ones; and
 - (b) those markets shall be the identified markets for the purposes of the further analysis.
- (7) Sections 79 to [^{F28}81] apply—
- (a) in relation to the identification of a services market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and
 - (b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

Textual Amendments

- F26** Words in s. 84(2) substituted (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. 39**
- F27** S. 84(3) 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. 46(b)** (with Sch. 3 paras. 2, 12)
- F28** Word in s. 84(7) substituted (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 30**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I11** S. 84 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))
- I12** S. 84 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)

[^{F29}84A. Timing of services market identifications and determinations

- (1) This section makes provision about the exercise by OFCOM of their powers—
- (a) to identify and analyse services markets;
 - (b) to make and review market power determinations in respect of such markets; and

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- (c) to set, modify and revoke SMP services conditions by reference to such determinations.

^{F30}(2)

- (3) Where, following the identification and analysis of a services market, OFCOM have made a market power determination in relation to it, they must ensure that within the specified period they have—

- (a) carried out a further analysis of the market and reviewed the identification and determination made on the basis of the earlier analysis; ^{F31}...

^{F31}(b)

- (4) Subsection (3) applies only where the market power determination was made after 25 May 2011.

^{F32}(5)

^{F32}(6)

[^{F33}(7) In subsection (3), “the specified period” means the period of 5 years from the publication under section 79(4) of the notification of the market power determination made on the basis of the earlier analysis, but this is subject to subsection (8).

- (8) If, in relation to an analysis and review that would otherwise be required within the period mentioned in subsection (7), OFCOM are of the opinion that exceptionally a longer period is justified, OFCOM may, by publishing a statement of the reasons for their opinion, extend the specified period by up to one additional year.]]

Textual Amendments

- F29** S. 84A inserted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 47** (with Sch. 3 para. 2)
- F30** S. 84A(2) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 31(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F31** S. 84A(3)(b) and word omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 31(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F32** S. 84A(5)(6) omitted (31.12.2020) by virtue of [The Electronic Communications and Wireless Telegraphy \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/246\)](#), reg. 1(2), **Sch. 1 para. 31(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F33** S. 84A(7)(8) substituted for s. 84A(7) (31.12.2020) by [The Electronic Communications and Wireless Telegraphy \(Amendment\) \(European Electronic Communications Code and EU Exit\) Regulations 2020 \(S.I. 2020/1419\)](#), reg. 1(3)(a), **Sch. 1 para. 74**

85 Review of apparatus market identifications and determinations

- (1) This section applies where OFCOM have identified and analysed an apparatus market for the purposes of making a market power determination.
- (2) OFCOM must, at such intervals as they consider appropriate, carry out further analyses of the identified market for one or both of the following purposes—
 - (a) reviewing market power determinations made on the basis of an earlier analysis;

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- (b) deciding whether to make proposals for the modification of SMP conditions set by reference to any such market power determination.
- (3) Where on, or in consequence of, a further analysis under this section, OFCOM determine that a person to whom any SMP conditions apply is no longer a person with significant market power in that market, they shall revoke every SMP apparatus condition applied to that person by reference to the market power determination made on the basis of the earlier analysis.
- (4) Before carrying out any further analysis under subsection (2), OFCOM may review any decision of theirs identifying the markets which it was appropriate to consider for the purpose of carrying out any earlier analysis.
- (5) Where on such a review OFCOM conclude that the appropriate markets have changed—
- (a) they shall identify the markets they now consider to be the appropriate ones; and
 - (b) those markets shall be the identified markets for the purposes of the further analysis.
- (6) Where on such a review OFCOM conclude that there is no person at all with significant market power in relation to the identified market—
- (a) they must so inform the Secretary of State; and
 - (b) the Secretary of State may by order remove or restrict OFCOM’s power under this Chapter to set SMP apparatus conditions by reference to that market.
- (7) Sections 79, [F3480, 80A and 81(1)] apply—
- (a) in relation to the identification of a apparatus market for the purposes of reviewing a market power determination under this section, as they apply in relation to the identification of such a market for the purpose of making a market determination; and
 - (b) in relation to the review of such a determination, as they apply in relation to the making of such a determination.

Textual Amendments

F34 Words in s. 85(7) substituted (26.5.2011) by [The Electronic Communications and Wireless Telegraphy Regulations 2011 \(S.I. 2011/1210\)](#), reg. 1(2), **Sch. 1 para. 48** (with Sch. 3 paras. 2, 11)

Commencement Information

I13 S. 85 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))

I14 S. 85 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)

86 Cases where review required

- (1) OFCOM must not set an SMP services condition by a notification which does not also make the market power determination by reference to which the condition is set unless—
- (a) the condition is set by reference to a market power determination which has been reviewed under section 84 and, in consequence of that review, is confirmed in the notification setting the condition; or

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- (b) the condition is set by reference to a market power determination made in relation to a market in which OFCOM are satisfied there has been no material change since the determination was made.
- (2) OFCOM must not modify or revoke SMP services conditions applying to a person except in a case falling within subsection (3) or (4).
- (3) The first case is where, for the purpose of determining whether to make the modification or revocation, OFCOM have—
- (a) carried out a further analysis under section 84 of the market in question; and
 - (b) reviewed the market power determination for the time being in force in that person's case.
- (4) The second case is where OFCOM are satisfied that there has not—
- (a) in the case of an unmodified condition, since the condition was set, or
 - (b) in any other case, since the condition was last modified,
- been a material change in the market identified or otherwise used for the purposes of the market power determination by reference to which the condition was set or last modified.
- (5) OFCOM must not modify SMP apparatus conditions applying to a person except where, for the purpose of determining whether to make the modification or revocation, they have—
- (a) carried out a further analysis under section 85 of the market in question; and
 - (b) reviewed the market power determination for the time being in force in that person's case.
- (6) A change is a material change for the purposes of subsection (1) or (4) if it is one that is material to—
- (a) the setting of the condition in question; or
 - (b) the modification or revocation in question.

Commencement Information

- I15** S. 86 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))
- I16** S. 86 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:

Communications Act 2003, Cross Heading: SMP conditions: procedure is up to date with all changes known to be in force on or before 12 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.

[View outstanding changes](#)

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\(1\)](#)