



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

[^{F1}SMP services conditions: wholesale-only undertakings

[^{F1}91A SMP services conditions: wholesale-only undertakings

- (1) Subsection (2) applies where—
 - (a) OFCOM make or have made a market power determination that a person (“the dominant provider”) has significant market power in an identified services market; and
 - (b) the dominant provider is not engaged in any of the following—
 - (i) the provision of a public electronic communications network to end-users of public electronic communications services;
 - (ii) the provision of a public electronic communications service to end-users;
 - (iii) the making available of associated facilities to end-users of public electronic communications services.
- (2) OFCOM must consider whether the following tests are satisfied in the case of the dominant provider.
- (3) The first test is that none of the persons specified in subsection (4) has activities in any retail market for electronic communications services provided to end-users in the [^{F2}United Kingdom].
- (4) Those persons are—

Changes to legislation: *Communications Act 2003, Section 91A is up to date with all changes known to be in force on or before 10 May 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*

- (a) the dominant provider;
 - (b) any subsidiary undertaking or parent undertaking of the dominant provider;
 - (c) any subsidiary undertaking of a parent undertaking of the dominant provider.
- (5) The second test is that the dominant provider is not bound to deal with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to end-users, because of an exclusive agreement, or an agreement which amounts in effect to an exclusive agreement.
- (6) If OFCOM are satisfied that both those tests are satisfied, OFCOM are not to apply to the dominant provider any SMP condition except one or more of the following—
- (a) a condition authorised by section 87(3);
 - (b) a condition authorised by section 87(6)(a);
 - (c) a condition which is authorised by section 87(9) and relates to fair and reasonable pricing in connection with the provision of network access to the dominant provider’s network.
- (7) Subsection (6) does not restrict OFCOM’s powers in a case where, by reason of the terms and conditions on which the dominant provider is willing to enter into an access contract, OFCOM conclude that competition problems have arisen or are likely to arise to the detriment of end-users.
- (8) The dominant provider must notify OFCOM as soon as reasonably practicable of any change in circumstances relevant to the application of the tests in subsections (3) and (5).
- (9) If, as a result of a notification under subsection (8) or otherwise, OFCOM determine that either of the tests in subsections (3) and (5) is no longer satisfied in relation to the dominant provider, OFCOM must consider whether to set or modify SMP conditions applying to the dominant provider.
- (10) In this section “parent undertaking” and “subsidiary undertaking” each has the meaning given by section 1162 of the Companies Act 2006.]

Textual Amendments

- F1** S. 91A and cross-heading 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. 43**
- F2** Words in s. 91A(3) substituted (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. 75**

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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\(1\)](#)