

SCHEDULES

SCHEDULE 1

Amendments to Communications Act 2003 and related amendments

Communications Act 2003

43. After section 80 insert—

“Domestic consultation for market identifications and market power determinations

80A.—(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 the proposal is of EU significance and 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;

Status: This is the original version (as it was originally made).

- (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 one month 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 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) Where the proposal is not of EU significance, OFCOM may then give effect to it, with any modifications that appear to OFCOM to be appropriate.

EU consultation for market identifications and market power determinations

80B.—(1) This section applies where, after complying with section 80A(9) in relation to a proposal of EU significance, OFCOM wish to proceed with the proposal.

(2) After making any modifications of the proposal that appear to OFCOM to be appropriate, OFCOM must send a copy of the proposal, and of a statement setting out the reasons for it, to—

- (a) the European Commission;
- (b) BEREC; and
- (c) the regulatory authorities in every other member State.

(3) If at the end of the period of one month referred to in paragraph (3) of Article 7 of the Framework Directive no indication has been given to OFCOM by the Commission under paragraph (4) of that Article, OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate.

(4) Before giving effect to the proposal under subsection (3), OFCOM must consider any comments made by—

- (a) the Commission;
- (b) BEREC; and
- (c) any regulatory authority in any other member State.

(5) Subsections (6) to (8) apply where such an indication is given by the Commission to OFCOM during that period.

(6) If under Article 7(5)(a) of the Framework Directive the Commission requires OFCOM to withdraw the proposal, OFCOM must amend or withdraw the proposal within 6 months of the date of the Commission's decision.

(7) Where the proposal is amended under subsection (6), section 80 applies in relation to the amended proposal as if it were a new proposal.

(8) OFCOM may give effect to the proposal, with any modifications that appear to them to be appropriate—

- (a) if the Commission takes a decision to lift its reservations in accordance with paragraph (5)(b) of Article 7 of the Framework Directive; or
- (b) if at the end of the period of 2 months referred to in paragraph (4) of that Article the Commission has neither required OFCOM to withdraw the proposal under paragraph (5)(a) nor lifted its reservations under paragraph (5)(b).”