



# Communications Act 2003

## 2003 CHAPTER 21

### PART 2

#### NETWORKS, SERVICES AND THE RADIO SPECTRUM

### CHAPTER 1

#### ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

##### *SMP services conditions: subject-matter*

#### **90 Conditions about carrier selection and pre-selection**

- (1) This section applies where—
  - (a) OFCOM have made a determination that a person (“the dominant provider”) has significant market power in an identified services market; and
  - (b) it appears to OFCOM that the market is a market relating to services for the provision of public electronic communications networks for use by means of connections at fixed locations.
- (2) It shall be the duty of OFCOM to set, and to apply to the dominant provider, such SMP conditions authorised by this section as they think fit.
- (3) The SMP conditions authorised by this section are conditions requiring the dominant provider to do one or both of the following—
  - (a) to make a relevant connection facility available to every person to whom he provides a public electronic communications service;
  - (b) for the purpose of making such a connection facility available to such persons, to make facilities for interconnection available to a person providing an electronic communications service.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) Where OFCOM set a condition requiring the dominant provider to make a relevant connection facility available, they shall also set such SMP conditions as they consider appropriate—
- (a) with respect to the relationship to costs of any prices fixed for the use of the facility; and
  - (b) for the purpose of securing that prices and other charges imposed on the persons to whom public electronic communications services are provided by the dominant provider do not constitute a disincentive to the use of the facility.
- (5) Where OFCOM set conditions authorised by this section, those conditions may include provision imposing obligations as to the manner in which one or both of the following are to be made available in accordance with the conditions—
- (a) the relevant connection facility in question;
  - (b) the facilities for interconnection that are to be made available to a person providing an electronic communications service.
- (6) In this section “relevant connection facility” is a facility which—
- (a) allows a person to whom a public electronic communications service is provided by means of an electronic communications network to select which public electronic communications service provided wholly or partly by means of that network is the service that he wishes to use; and
  - (b) enables that selection to be made either—
    - (i) by the use of a telephone number on each separate occasion on which a selection is made; or
    - (ii) by designating in advance the selection that is to apply on every occasion when no such selection as is mentioned in sub-paragraph (i) is made.