

2003 No. 2712

ELECTRONIC COMMUNICATIONS

**The Electronic Communications (Networks and Services)
(Penalties) (Rules for Calculation of Turnover) Order 2003**

Made - - - - - *22nd October 2003*

Coming into force - - - *27th October 2003*

Whereas a draft of this Order has been laid before Parliament in accordance with section 97(4) of the Communications Act 2003(a);

And whereas the said draft as so laid has been approved by resolution of each House of Parliament;

Now therefore the Secretary of State in exercise of the powers conferred on her by sections 97(3)(a) and 402(3)(a) of the Communications Act 2003 hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003 and shall come into force on 27th October 2003.

Interpretation

2. In this Order:
“the Act” means the Communications Act 2003; and
“notified provider” has the same meaning as in section 96 of the Act.

Rules for Calculation of turnover for the purposes of section 97

3. The rules for the calculation of turnover of a notified provider’s relevant business for a relevant period for the purposes of section 97 of the Act shall be the rules set out in the Schedule to this Order.

22nd October 2003
Stephen Timms,
Minister of State for Energy, E-Commerce and Postal Services
Department of Trade and Industry

(a) 2003 c. 21.

SCHEDULE

Rule 3

RULES FOR CALCULATION OF TURNOVER FOR PURPOSES OF SECTION 97

General rules

1. The turnover of a notified provider shall be calculated in conformity with accounting practices and principles which are generally accepted in the United Kingdom.
2. The turnover of a notified provider shall be limited to the amounts derived by that provider from the relevant business after deduction of sales rebates, value added tax and other taxes directly related to turnover.
3. When a notified provider's relevant business consists of two or more undertakings that each prepare accounts then the turnover shall be calculated by adding together the turnover of each, save that no account shall be taken of any turnover resulting from the supply of goods or the provision of services between them.

Rules about aids granted to a notified provider

4. Any aid (within the meaning of Article 87 of the EC Treaty) granted by a public body to a notified provider which relates to one of that provider's ordinary activities shall be included in the calculation of turnover if the notified provider is himself the recipient of the aid and if the aid is directly linked to the carrying out by that provider of the relevant business.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out rules governing the way in which the turnover of a notified provider of electronic communications networks, services, facilities, or apparatus should be calculated for the purposes of section 97 of the Communications Act 2003.

A notified provider is a person in respect of whom OFCOM have given a notification under section 94 that there are reasonable grounds for believing that that person is contravening, or has contravened, a condition set under section 45. Conditions set under section 45 are general conditions, universal service conditions, access-related conditions, privileged supplier conditions and significant market power conditions.

Where OFCOM determine that a notified provider is in contravention of a condition specified in the notification, they may impose, on that provider, a penalty of up to 10 per cent of the turnover of the provider's relevant business.

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