



Communications Act 2003

2003 CHAPTER 21

PART 2

NETWORKS, SERVICES AND THE RADIO SPECTRUM

CHAPTER 1

ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

[^{F1}Commitments by network provider

Textual Amendments

- F1** Ss. 93A-93D 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. 44](#)

93A Notification to OFCOM of proposed commitments

- (1) This section applies where OFCOM have made, or are considering the making of, a determination that a person who provides a public electronic communications network (“the dominant provider”) has significant market power in an identified services market.
- (2) The dominant provider may notify OFCOM of a proposal to address the competition problems that are identified in the market power determination, or the possible competition problems that are identified in the proposal for a market power determination, by making commitments to provide network access to, or co-investment in, that network.
- (3) The proposal must—

Changes to legislation: *Communications Act 2003, Cross Heading: Commitments by network provider 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) be sufficiently detailed to enable OFCOM to undertake a detailed consideration under subsection (6);
 - (b) specify the period during which the dominant provider is willing to be bound by the commitments; and
 - (c) comply with such other requirements as OFCOM may publish for the purposes of this subsection.
- (4) If the proposal complies with subsection (3), OFCOM must publish a notification of the proposal.
- (5) The notification must—
- (a) state that OFCOM are considering whether to accept the proposed commitments;
 - (b) set out the effect of the proposal and an initial analysis by OFCOM of the proposal; and
 - (c) specify the period within which representations may be made to OFCOM about the proposal and analysis.
- (6) OFCOM must—
- (a) consider every representation about the proposal and analysis made to them during the period specified in the notification under subsection (5);
 - (b) notify the dominant provider of their opinion—
 - (i) that the proposal is adequate to address the competition problems, or possible competition problems, mentioned in subsection (2); or
 - (ii) that if specified changes were made the proposal would be adequate to address those problems; or
 - (iii) that for specified reasons the proposal is inadequate to address those problems; and
 - (c) publish the notification given under paragraph (b).
- (7) The dominant provider may then revise the proposal in the light of OFCOM’s opinion.
- (8) If the dominant provider notifies OFCOM that the dominant provider is willing to implement the proposal, or the proposal as revised under subsection (7), OFCOM may decide to make the commitments binding, for such period as they may specify in the decision.
- (9) A decision under subsection (8) (referred to in this Chapter as a “commitments decision”) takes effect on being notified by OFCOM to the dominant provider and published by OFCOM.
- (10) The publication of a notification under this section must be in such manner as appears to OFCOM to be appropriate for bringing the notification to the attention of the persons who, in OFCOM’s opinion, are likely to be affected by the matters notified.

93B Notification of proposed commitments relating to very high capacity network

- (1) Section 93A has effect subject to the provisions of this section in a case where—
- (a) the dominant provider referred to in section 93A(1) proposes commitments which include a commitment to open up investment in a network to co-investment (“a co-investment commitment”);
 - (b) the network is a very high capacity network which consists of optical fibre elements—

Changes to legislation: Communications Act 2003, Cross Heading: Commitments by network provider 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](#)

- (i) up to the premises of the end-user or, where this is technically impracticable, up to the immediate proximity of those premises; or
 - (ii) up to the base station; and
 - (c) the bringing into operation of the network was not publicly announced before 21 December 2018;
 - (d) the dominant provider has notified OFCOM under subsection (2) of section 93A of a proposal complying with subsection (3) of that section.
- (2) OFCOM are not required to publish under section 93A(4) a notification complying with section 93A(5) in relation to the proposed co-investment commitment if in their opinion the proposal does not address all the matters specified in subsection (3) of this section.
- (3) In considering the proposed co-investment commitment under section 93A(6), OFCOM must, in particular, consider whether in their opinion the offer to co-invest satisfies the following requirements—
 - (a) it is open at any moment during the lifetime of the network to any provider of electronic communications networks or services;
 - (b) it would allow other co-investors who are providers of electronic communications networks or services to compete effectively and sustainably in the long term in downstream markets in which the dominant provider is active on terms which include—
 - (i) fair, reasonable and non-discriminatory terms allowing access to the full capacity of the network to the extent that it is subject to co-investment;
 - (ii) flexibility in terms of the value and timing of the participation of each co-investor;
 - (iii) the possibility of increasing such participation in the future;
 - (iv) reciprocal rights awarded by the co-investors after the bringing into operation of the co-invested infrastructure;
 - (c) it is made public by the dominant provider in a timely manner and, if the dominant provider is not a wholesale-only undertaking, within such period of not less than 6 months before the bringing into operation of the new network as OFCOM consider appropriate;
 - (d) persons seeking access to the network but not participating in the co-investment can benefit from the outset from the same quality, speed, conditions and end-user reach as were available before the bringing into operation of the network;
 - (e) it is accompanied by a mechanism of adaptation over time, confirmed by OFCOM in light of developments on the related retail markets, that—
 - (i) maintains the incentives to participate in the co-investment; and
 - (ii) ensures that persons seeking access at any time have access to the very high capacity elements of the network on transparent and non-discriminatory terms which reflect appropriately the degrees of risk incurred by the respective co-investors at different stages of the bringing into operation of the network and take into account the competitive situation in retail markets;
 - (f) it complies with—
 - (i) the criteria set out in points (a) to (d) of Annex 4 to the EECC Directive; and

Changes to legislation: Communications Act 2003, Cross Heading: Commitments by network provider 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

- (ii) any additional criteria that OFCOM consider necessary to ensure accessibility of potential investors to the co-investment and publish for the purposes of this section; and
 - (g) it is made in good faith.
- (4) OFCOM must, by a commitments decision, make the co-investment commitment binding if—
- (a) in considering the proposal under section 93A(6), they determine that the co-investment commitment—
 - (i) satisfies (or, if changes specified under section 93A(6) were made, would satisfy) the requirements in subsection (3); and
 - (ii) is adequate (or, if changes so specified were made, would be adequate) to address the competition problems, or possible competition problems, mentioned in section 93A(2); and
 - (b) the dominant provider notifies OFCOM under section 93A(8) in relation to the proposal (or, as the case requires, the proposal as revised under section 93A(7)).
- (5) In the case of a co-investment commitment, the period specified by OFCOM in a commitments decision must be at least 7 years.

[In determining whether the requirements of subsection (3) are met, OFCOM may have ^{F2}(6) regard to any guidelines that are from time to time published by BEREC under Article 76(4) of the EECC Directive (whether before or after IP completion day).]

Textual Amendments

F2 S. 93B(6) 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. 76](#)

93C Giving effect to commitments decision

- (1) It is the duty of the dominant provider to comply with the commitments specified in a commitments decision during the period specified in the decision.
- (2) As soon as practicable after making a commitments decision in a case where SMP services conditions have been applied or would have been applied to the dominant provider, OFCOM must review the appropriateness, having regard to the commitments decision, of the conditions that have been or would have been applied.
- (3) In carrying out the review, the matters to which OFCOM are to have regard include—
 - (a) evidence regarding the fair and reasonable character of the commitments;
 - (b) whether the commitments involve obligations to all market participants;
 - (c) whether the commitments promote the timely availability of access under fair, reasonable and non-discriminatory conditions, including access to very high capacity networks, before the launch of related retail services;
 - (d) the overall adequacy of the commitments to enable sustainable competition on downstream markets and to facilitate co-operative deployment and take-up of very high capacity networks in the interests of end-users.

Changes to legislation: Communications Act 2003, Cross Heading: Commitments by network provider 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](#)

- (4) If, in the case of a commitment made binding as a result of section 93B(4), at least one person has entered into an agreement for co-investment with the dominant provider under the commitments decision, OFCOM must take steps to revoke or modify any SMP services conditions that they consider to be affected by the decision.
- (5) Subsection (4) does not apply where, in OFCOM’s opinion, the characteristics of the services market to which the determination referred to in section 93A(1) relates are such that, despite the commitments to which effect is given by the commitments decision, the SMP services condition continues to be necessary in order to address significant competition problems.
- ^{F3}(6)
- (7) In this section “dominant provider” means the person who made the proposal to which the commitments decision relates.

Textual Amendments

F3 S. 93C(6) 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. 77](#)

93D Modification of commitments

- (1) This section applies where a commitments decision has effect in relation to a person who provides a public electronic communications network (“the dominant provider”).
- (2) The dominant provider may notify OFCOM of a proposed modification of the commitments that are made binding by the commitments decision.
- (3) In a case where OFCOM consider that the modification would not have a material effect, they may make a decision under section 93A(8) relating to the commitments as proposed to be modified.
- (4) In any other case, OFCOM must notify the dominant provider of their opinion that the proposed modification would have a material effect; and subsections (2) to (10) of section 93A then apply in relation to the commitments as proposed to be modified.]

Changes to legislation:

Communications Act 2003, Cross Heading: Commitments by network provider 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.

[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\(1\)](#)