

# Statutory Instrument 2004 No. 2068

## **The Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004**

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### STATUTORY INSTRUMENTS

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**2004 No. 2068**

**COMPETITION**

**ELECTRONIC COMMUNICATIONS**

The Competition Appeal Tribunal (Amendment and Communications Act Appeals)  
Rules 2004

*Made*

*2nd August 2004*

*Laid before Parliament*

*4th August 2004*

*Coming into force*

*25th August 2004*

The Secretary of State, after consultation with the President of the Competition Appeal Tribunal and such other persons as she considers appropriate in accordance with section 15(1) of the Enterprise Act 2002[1], and after consultation with the Council on Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992[2], in exercise of the powers conferred by section 15 of and Part 2 of Schedule 4 to the Enterprise Act 2002 and by sections 192(3) and (4) and 193(1), (2)(b) and (3) of, and paragraph 23(5) of Schedule 18 to, the Communications Act 2003[3], hereby makes the following Rules:

### **Citation and commencement**

**1.** - (1) These Rules may be cited as the Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 and shall come into force on 25th August 2004.

(2) In these Rules-

"the Act" means the Communications Act 2003;

"the Commission" means the Competition Commission;

"principal rule" means a rule of the Competition Appeal Tribunal Rules 2003[4];

"specified price control matter" means a price control matter specified in rule 3(1).

### **Amendment of Principal Rules**

**2.** The Competition Appeal Tribunal Rules 2003 shall be amended as provided in the Schedule to these Rules.

### **Reference of price control matters to the Competition Commission**

**3.** - (1) For the purposes of subsection (1) of section 193 of the Act, there is specified every price control matter falling within subsection (10) of that section which is disputed between the parties and which relates to-

(a) the principles applied in setting the condition which imposes the price control in question,

(b) the methods applied or calculations used or data used in determining that price control, or

(c) what the provisions imposing the price control which are contained in that condition should be (including at what level the price control should be set).

(2) In a notice of appeal under principal rule 8, the appellant may include a statement indicating the extent to which-

(a) the appeal relates to price control, or

(b) a specified price control matter arises in the appeal.

(3) In a defence under principal rule 14, the respondent may include a statement indicating the extent to which the appeal relates to price control or a specified price control matter arises in the appeal, including a statement in rebuttal of a statement under paragraph (2).

(4) In a request to intervene under principal rule 16, the person making the request may include a statement indicating the extent to which the appeal relates to price control or a specified price control matter arises in the appeal, including a statement in rebuttal of any statement under paragraph (2) or (3).

(5) The Tribunal shall refer to the Commission for determination in accordance with section 193 of the Act and rule 5 every matter which, either upon consideration of any statement provided for in paragraphs (2) to (4) or in the subsequent course of the appeal, it decides is a specified price control matter.

(6) The Tribunal may make a reference to the Commission under paragraph (5) at any time before it delivers its decision.

(7) This rule applies in all cases in which the Tribunal has not delivered its decision before 25<sup>th</sup> August 2004.

#### **Appeals relating to price control: transitional provision**

4. Notwithstanding principal rule 8(1) (which provides a time limit of two months from notification or publication of a decision for making an appeal), an appeal to the Tribunal may be made at any time before 26<sup>th</sup> October 2004 if-

- (a) the appeal relates to price control, or
- (b) a specified price control matter arises in the appeal.

#### **Determination by Competition Commission of price control matters**

5. - (1) Subject to any directions given by the Tribunal (which may be given at any time before the Commission have made their determination), the Commission shall determine every price control matter within four months of receipt by them of the reference.

(2) The Tribunal may give directions as to the procedure in accordance with which the Commission are to make their determination.

(3) The Tribunal may give directions under this rule of its own motion or upon the application of the Commission or of any party.

#### **Appeals under repealed enactments**

6. If an appeal under section 1F of the Wireless Telegraphy Act 1949<sup>[5]</sup> or section 46B of the Telecommunications Act 1984<sup>[6]</sup> ("the old appeal") is stayed or sisted under subparagraph (3) of paragraph 23 of Schedule 18 to the Act and a new appeal is brought under subparagraph (4) of that paragraph-

- (a) all pleadings and (except in Scotland) written evidence in the old appeal shall be treated as pleadings and written evidence in the new appeal,
- (b) all other steps taken and things done in the old appeal shall be taken into account in the new appeal to the extent directed by the Tribunal, and
- (c) the Tribunal may give directions to OFCOM as to the carrying out of their functions

which are the same as or correspond to directions which could have been given by the court before 25<sup>th</sup> July 2003 under subsection (4) of the said section 1F or (as the case may be) 46B.

*Stephen Timms,*

Minister of State for Energy, E-Commerce and Postal Services, Department of Trade and Industry

2nd August 2004

## SCHEDULE

### Rule 2

#### Amendments to the Competition Appeal Tribunal Rules 2003

**1.** In rule 12(2)-

(a) at the end of paragraph (a) the word "and" is deleted;

(b) at the end of paragraph (b) there are added the words-

" and

(c) publish any decision which it would have made had the appeal not been withdrawn."

**2.** In rule 16(9), the words "and any response thereto" are deleted.

**3.** In rule 43(7), the words "Notwithstanding rule 55(3)" are deleted.

**4.** In rule 55-

(a) in paragraph (3), for the words "paragraph (1), (2) or (3)" there are substituted the words "paragraph (2)";

(b) in paragraph (4), for the words "paragraphs (1) and (2)" there are substituted the words "paragraph (2) or a direction made pursuant to paragraph (3)".

**5.** In rule 62-

(a) in paragraph (1)(a), for "28(2)" there is substituted "28(4)";

(b) in paragraph (1)(f), for the words "rules 58 (Permission to appeal) and 59" there are substituted the words "rule 59".

6. In rule 63(6), after the words "is served" there are inserted the words "or is treated by virtue of paragraph (5) as having been served".

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

Rule 2 introduces the Schedule. Paragraph 1 of the Schedule enables the Competition Appeal Tribunal to publish what would have been its decision in an appeal which is withdrawn. Paragraphs 2 to 6 make minor amendments correcting errors in the Competition Appeal Tribunal Rules 2003. A copy of the Schedule is available separately from Consumer and Competition Policy Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET or from [glenn.fisher&commat;dti.gsi.gov.uk](mailto:glenn.fisher&commat;dti.gsi.gov.uk).

Rule 3 provides for reference by the Tribunal to the Competition Commission of the price control matters arising in an appeal specified in the rule.

Rule 4 provides that price control appeals may be made to the Tribunal at any time before 26<sup>th</sup> October 2004 even though they may otherwise be out of time.

Rule 5 provides that, subject to directions from the Tribunal, the Commission must complete their determination of price control matters within four months and that the Tribunal may give other directions as to the Commission's procedure.

Rule 6 makes provision to facilitate the conversion of appeals under sections 1F of the Wireless Telegraphy Act 1949 and section 46B of the Telecommunications Act 1984 into appeals under section 192 of the Communications Act 2003.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the cost of business.

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### Notes:

[1] 2002 c. 40.

[2] 1992 c. 53; see Schedule 1 to the Act, which is amended by paragraph 27 of Schedule 25 to the Enterprise Act 2002.

[3] 2003 c. 21.

[4] S.I. 2003/1372.

[5] 1949 c. 54; section 1F is repealed by the Communications Act 2003(c. 21), section 406(7) and Schedule 19.

[6] Section 46B is repealed by the Communications Act 2003(c. 21), section 406(7) and Schedule 19.

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