EXPLANATORY MEMORANDUM FROM THE DEPARTMENT OF TRADE AND INDUSTRY

Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 No.2068 (the "Rules")

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

Compatibility with European Convention on Human Rights

1. Stephen Timms, Minister for Energy, E-Commerce and Postal Services is of the view that the Rules are compatible with the European Convention on Human Rights.

Powers under which the instrument is made

2. Enterprise Act 2002 (section 15, and Part 2 of Sch. 4) and Communications Act 2003 (sections 192(3) and (4), sections 193(1), (2)(b) and (3), and para 23(5) of Sch. 18).

Wider legislative context

3. Procedural rules have already been made for appeals under the Enterprise Act to the Competition Appeal Tribunal (the "Tribunal") (the Competition Appeal Tribunal Rules 2003, SI 2003/1372 (the "Principal Rules")). A number of minor errors in the Principal Rules were reported by the Joint Committee on Statutory Instruments (25th report, 2002-03), and the Rules correct these. Also, section 192 of the Communications Act provides for appeals against various decisions of Ofcom or the Secretary of State, including those under Part 2 of the Communications Act (networks, services and the radio spectrum), to be made to the Tribunal. Where price control matters arise within such an appeal, section 193 of the Communications Act provides that they are to be referred to the Competition Commission (the "Commission") for determination, and the Rules contain procedural rules to be applied to any such reference.

Policy background to the instrument

4. Among other things, the Communications Act implements the four EC Directives on regulation of electronic communications networks and services (Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC). Directive 2002/21/EC, the "Framework Directive", requires that there should be an appeal on the merits against decisions of the regulator. This right of appeal is provided by sections 192-196 of the Communications Act. The Principal Rules are sufficient to provide for procedure in Communications Act appeals in general, but the instrument provides further rules to deal with the distinctive aspects of procedure for appeals which are to be referred to the Commission under section 193.

5. The DTI has consulted widely on the Rules, including persons consulted on the making of the Principal Rules, and the principal providers of electronic networks and services. A number of minor changes have been made to the Rules in response to points made by consultees.

Regulatory impacts

6. Completes the procedural provision for appeals to the Tribunal under the Communications Act. No other impact identified.

Costs to the public

7. None identified.

Costs to the Exchequer

8. None identified.

Applicability to Wales

9. Applies to Wales as to England. No separate or distinctive provision in relation to Wales.

2 August 2004