

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 July 2015 – 30 September 2015

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1. Background

On 11 March 2008, the Competition Commission (CC) announced its decision to allow the merger of transmission companies Arqiva and National Grid Wireless (NGW) subject to the agreement of a package of measures (undertakings) to protect the interests of their customers.

Arqiva and NGW overlap in the provision of Managed Transmission Services (MTS) and Network Access (NA) to transmitter sites and associated facilities for terrestrial television and radio broadcasters. In its final report, the CC found that Arqiva and NGW were the only active providers of MTS/NA to the UK television broadcasters. The companies were also the most significant providers of national MTS/NA to UK radio broadcasters with a combined market share of more than 85%. In both cases, prior to merger, the companies had exercised a competitive constraint on each other.

The CC concluded the merger of the two companies would lead to a “substantial lessening of competition” in broadcast transmission services, specifically in the provision of MTS/NA to television and radio broadcasters.

After consultation by the CC with Arqiva, its customers and other stakeholders, the Commission accepted certain undertakings from Arqiva on 1 September 2008.

http://webarchive.nationalarchives.gov.uk/20140402141250/http://competition-commission.org.uk/inquiries/ref2007/macquarie/pdf/notice_undertakings.pdf

The Undertakings are intended to mitigate the substantial lessening of competition by protecting existing and new customers over the terms and conditions of supply, including protection against future price rises and protection against changes in non-price related areas (such as discrimination issues and service standards).

The Undertakings provide for the appointment of an Adjudicator, as described in Appendix 1 (Adjudication Scheme) and Appendix 2 (Adjudication Rules). The main role of the Adjudicator is to determine disputes arising out of the operation of the Undertakings.

Paragraph 35 of Appendix 1 to the Undertakings requires the Adjudicator to make periodic reports to the Office of Fair Trading (now the Competition and Markets Authority), copied to Ofcom, covering the following points:

- Any Guidance issued
- Determinations in relation to Disputes
- The views of the Adjudicator about the operation of the Undertakings, the Adjudication Scheme and Adjudication Rules as well as any recommendations for amendments
- The views of the Adjudicator on the performance of Arqiva in complying with the Undertakings

This report covers the operation of the Office of the Adjudicator over the period from 1 July 2015 to 30 September 2015. This report will be published on the website of the Adjudicator (www.adjudicator-bts.org.uk) with any information that the Adjudicator regards as confidential redacted.

2. Office of the Adjudicator

2.1 Adjudicator

The Office consists of Alan Watson as Adjudicator on a 3 day/week basis. Megan Donald is Executive Assistant and Office Manager on a part time basis.

After consideration of the projected work load of the office, the Adjudicator has decided not to appoint a replacement Deputy. Mr Jon Butler, who has assisted with audit and various other tasks, will do some work on an occasional basis and will stand in for the Adjudicator should this be necessary (as envisaged by and subject to the requirements of the Undertakings).

Legal advice is provided by Mr Paul Herbert of Goodman Derrick LLP.

Office facilities and IT support are provided by Ofcom.

2.2 Budget

A budget for 2015/16 has been finalised at £521,380 for operations and £470,000 for contingency. As a result of the changes outlined above, the operations budget has been revised to £485,104. At the half year point expenditure was £174,887.59

2.3 Stakeholder Meetings

During this period regular meetings with stakeholders have continued and include government departments, television broadcasters and radio broadcasters, both large and small:

Confidential information redacted

2.4 Arqiva

Paragraph 35 of Appendix 1 of the Undertakings requires the Adjudicator to comment on the performance of Arqiva over this period, in relation to the Undertakings.

The performance of Arqiva continues to be generally satisfactory.

3 Disputes and Guidance

3.1 Guidance

In this period there have been no disputes requiring the use of the formal dispute procedure.

4 Publication of Reference Offers

No new reference offers have been published in this period.

Arqiva reference offers can be found at:

<http://www.arqiva.com/documentation/reference-offers/>

5 Reporting and Audit

5.1 Regulatory Accounts

Arqiva is obliged to produce annual accounts in accordance with the requirements set out in Paragraph 15 and Appendix 14 of the Undertakings. The regulatory accounts covering the period 1 July 2013 to 30 June 2014 are available on Arqiva's website:

http://www.arqiva.com/documentation/regulatory/network-access-and-managed-transmission-services/FY14%20ABHL%20Regulatory%20Accounts_v2.pdf

And the methodology:

<http://www.arqiva.com/documentation/regulatory/corporate/FY14%20RAPM.pdf>

The accounts to 30 June 2015 are in preparation and will be published late October.

5.2 Compliance Report

Paragraph 18.1 of the Undertakings requires Arqiva to deliver an annual report to the Office of Fair Trading (now the Competition and Markets Authority) setting out steps taken to comply with the Undertakings and details of any breaches and including steps taken to remedy them.

The 2015 report has been delivered to the CMA.

There were no instances of non-compliance in the last report.

5.3 The Undertakings

The Adjudicator believes that the Undertakings, the Adjudication Scheme and Adjudication Rules are satisfactory at the present time and that no changes are needed.

5.4 Information Security Strategy

Paragraph 16.2 of the Undertakings requires Arqiva to produce an Information Security Strategy which defines the measures to be taken to ensure that confidential information held in one part of the company cannot be used by another for commercial advantage.

The Information Security Strategy can be found at:

<http://www.arqiva.com/documentation/corporate/arqiva-information-security-strategy-version-1.0.pdf>

The Adjudicator commissioned an independent audit of the strategy and the final audit report was published during May 2011.

<http://www.adjudicator-bts.org.uk/documents/AuditArqivaInformationSecurityStrategyMarch2011.pdf>

Arqiva are restructuring and this will have some implications for information security. Arqiva have briefed the Adjudicator on how they will meet the requirement of Information Security under the new structure. In due course, the Adjudicator will audit the new arrangements.

5.5 DAB

In 2014 a revised plan for rollout was agreed and the earlier MOU, to which the Adjudicator was a signatory, has been replaced. The Adjudicator is not a signatory of the replacement but has an advisory role.

<https://www.gov.uk/government/publications/local-dab-network-expansion-2015-16>

6 Planned future activity

6.1 Guidance

The Adjudicator has previously issued guidance covering Paragraphs 6 and 9-12 of the Undertakings. The Adjudicator considers that no further guidance is currently required in relation to Paragraph 6 of the Undertakings.

At present the Adjudicator is of the opinion that no Guidance is required in relation to Paragraph 3 of the Undertakings. Application of, and compliance with, this paragraph will be monitored and Guidance issued at a later date if necessary.

The Adjudicator holds a series of documents produced by Ofcom which cover detailed guidance for the production of reference offers. Some of this is specific to the now historic High power DTT reference offer and so the Adjudicator has now prepared and published a summary document which covers the aspects which constitute current guidance.

<http://www.adjudicator-bts.org.uk/guidance.htm>

6.2 WACC review.

WACC for Network Access was determined by Ofcom in 2005 and reviewed by the Adjudicator in 2010. That review concluded that the original determination was unchanged and concluded that a next review would take place in 2014 after Arqiva had undertaken a refinancing exercise.

Plum Consulting has been appointed to conduct the review and have commenced work.

The brief is to update the previous report

[http://adjudicator-bts.org.uk/documents/Plum July2010 Cost of capital in relation to broadcast transmission.pdf](http://adjudicator-bts.org.uk/documents/Plum_July2010_Cost_of_capital_in_relation_to_broadcast_transmission.pdf)

and, if appropriate, to recommend a revised WACC figure for the broadcast transmission business of Arqiva.

The Plum Consulting report can be found at

[http://www.adjudicator-bts.org.uk/documents/Plum Jan 2015 Estimated WACC for broadcast transmission.pdf](http://www.adjudicator-bts.org.uk/documents/Plum_Jan_2015_Estimated_WACC_for_broadcast_transmission.pdf)

and the covering consultation document at

[http://www.adjudicator-bts.org.uk/documents/Consultation 2 2015.pdf](http://www.adjudicator-bts.org.uk/documents/Consultation_2_2015.pdf)

One response, from the BBC, was received by the closing date of 17 March 2015. The Adjudicator has considered that response and has issued a final determination.

<http://www.adjudicator-bts.org.uk/documents/Determination%20of%20Consultation%202015%20Cost%20of%20Capital%20in%20Relation%20to%20Broadcast%20Transmission%20-%20Comment%20and%20determination.pdf>

6.3 Audits

The Adjudicator is planning two future audits. The first, as noted above, will be to audit the revised Information Security arrangements following an Arqiva reorganisation.

The second will be to audit some sample sites from the KEEP database. This database records the occupancy of sites (antennas, etc) and is the basis for charging. The audit will take a sample of sites and ensure that the database reflects what is installed on those sites. As the KEEP database is fundamental to the preparation of regulatory accounts an audit of four sites was undertaken as part of the regulatory accounts audit in September. The starting point for this audit was photographs and drawings; the future one will include site visits for verification. No significant variations were found between the drawings/photographs and the KEEP database