

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 January 2017 – 31 March 2017

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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 January 2017 to 31 March 2017. 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.

Mr Jon Butler has been appointed as Deputy adjudicator with effect from 1 April 2017.

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

Office facilities and IT support are provided by Ofcom.

2.2 Budget

An operational budget for 2016/17 has been agreed at £476,872 with contingency of £470,000. Expenditure to the end of March was £371,600

An operational budget of £476,476 with a contingency of £470,000 has been agreed for 2017/18.

2.3 Stakeholder Meetings

During this period regular meetings and communication 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.

The radio rate card for site access can be found at;

[https://www.arqiva.com/documentation/reference-offers/broadcast-radio/Argiva Radio Rate Card for Network Access 2016-17.pdf](https://www.arqiva.com/documentation/reference-offers/broadcast-radio/Argiva%20Radio%20Rate%20Card%20for%20Network%20Access%202016-17.pdf)

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 accounts for the period 1 July 2015 to 30 June 2016 have been produced and approved and are available at:

<https://www.arqiva.com/documentation/regulatory/network-access-and-managed-transmission-services/Signed%20FY16%20regulatory%20accounts.pdf>

The Regulatory Accounting Principles and Methodologies (RAPAMS) which set out how the accounts are produced and are approved by the Adjudicator can be found at:

<https://www.arqiva.com/documentation/regulatory/corporate/RAPM%202016%20Final.pdf>

The first meeting between the Adjudicator, auditors and Arqiva in relation to the 2016/17 accounts is set for June 2017 with the accounts for 2016/17 to be published in October 2017.

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 2016 report has been delivered to the CMA, Ofcom and the Adjudicator. There were no instances of non-compliance.

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>

An audit of the information security strategy has been conducted in this quarter and the results are satisfactory. The audit report can be found in Appendix A at the end of this document.

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 Audits

As noted in 5.4 above, the information security audit has been completed.

Later in 2017, the Adjudicator is intending a further audit of the KEEP database which records site usage and is the basis for dividing the site costs. The audit will include visiting a selection of sites and comparing what is on the site with what the records show.

6.3 700 MHz clearance.

The Adjudicator has no formal role in the 700MHz clearance programme but some aspects do come within the remit. One such is that the commercial manager handling customer relations for clearance left the company during this period. Mr Mike Finchen was seconded from the platforms business to cover the role while recruitment took place. This raised a potential information security issue which was addressed by a special protocol agreed with the Adjudicator and the multiplex operators. Compliance will be monitored by the Adjudicator.

Appendix A

The Office of the Adjudicator - BTS

Audit of the Arqiva Information Security Strategy

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Version No	Date	Modified by	Notes
0.1	22/1/2017	J Butler	First draft for comment
1.0	10/3/2017	J Butler	Minor revisions following Arqiva review
1.0R	10/3/2017	J Butler	Redacted version non-confidential
1.1R	20/3/2017	J Butler	Minor revisions following Arqiva review

Introduction

1. The purpose of this document is to set out the findings from the second audit of the operation of Arqiva's Information Security Strategy (ISS).
2. 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. Section 16¹ of the Undertakings requires that Arqiva publish an ISS to meet the confidentiality of information requirements of the Undertakings. The Undertakings also set requirements related to this strategy. The Office of the Adjudicator- BTS undertook the first audit of the Arqiva ISS during March 2011.
3. This second audit is not an identical repeat of the first audit but instead considers what has changed since the first audit, what remains in place and what is new. It considers structural changes within Arqiva, procedural changes and current measures employed by Arqiva to meet the requirements of the ISS. The scope of this audit is set out in this document with references to the first audit where helpful to do so.
4. A preliminary meeting with Arqiva was held in November 2016 to establish what has changed since the first audit. Arqiva have since provided answers to follow up questions and have provided several documents and statements to support these answers.
5. A second meeting with Arqiva was held in January 2017 where Arqiva provided evidence of the ISS protocols and measures in operation. In addition, interviews were held with personnel from Arqiva's training department and internal audit department.

¹ This section of the Undertakings is shown in Annex 3

Executive Summary & Outcome

6. This is the second audit of Arqiva's protocols and measures for information security. Information security is a requirement from section 16 of the Undertakings. The protocols and measures are set out in Arqiva's Information & Security Strategy (ISS).
7. Arqiva provided evidence in the form of documents, statements, examples and demonstrations to support their operation of all aspects of the ISS.

The findings of this audit are that **Arqiva have reasonably demonstrated that the ISS protocols and measures are operating satisfactorily.**

8. The previous audit in 2011 made two observations;
 - 1) *Since the ISS document was published the protocols and measures referenced in the ISS document have been put into practice and in some cases further developed. It is recommended that either the ISS document is updated to reflect current practices or a separate document is produced which describes these practices.*
 - 2) *That tests related to the protocols and measures are documented and that the results of these tests are recorded.*

Arqiva have not updated the ISS since the last audit but have updated procedures, documents and practices to reflect their current operation.

Arqiva test the operation of the protocols and measures relating to the storage of sensitive information and those relating to access of controlled areas. The tests are undertaken by internal and external auditors and for compliance with ISO 27001.

Audit Scope

9. In March 2011, the first audit scope was agreed between the Adjudicator and Arqiva with the aim to answer the question: 'Do Arqiva meet the requirements of the Undertakings in regard of their ISS?' The following questions were considered.
 - 9.1. Do the protocols and measures described in the Arqiva ISS document meet the requirements of the Undertakings?
 - 9.2. Can Arqiva demonstrate that these protocols and measures are appropriately applied and successfully practiced within their business?
10. Arqiva's ISS document has not changed since the first audit in 2011 and so question 9.1 will not be repeated. Question 9.2 will be considered in this 2017 audit through the audit steps set out below.

Audit Steps

11. In March 2011, it was agreed that the first audit would follow the following steps to answer audit questions 9.1 and 9.2 from the original scope.
 - To review the ISS document with Arqiva.
 - Establish how the protocols and measures within the ISS document are practically undertaken within Arqiva.
 - To agree tests and checks related to these protocols and measures as applied to real business activities within Arqiva.
 - Undertake these tests and checks, and to obtain evidence as appropriate
 - Establish if the protocols and measures, as evidenced, meet the requirements of the Undertakings
12. The steps for this second audit consider what has changed and are as follows.
 - Step 1: Review the protocols and measures previously tested and establish whether the same are in operation or whether there have been any changes or new protocols/measures introduced.
 - Step 2: To agree tests and checks related to these protocols and measures as applied to real business activities within Arqiva.
 - Step 3: Undertake these tests and checks, and to obtain evidence as appropriate.

Audit Step 1 – Review the protocols & measures previously tested

13. Step 1 of the audit considers the protocols and measures previously tested and whether those same measures are in operation or whether there have been any changes or new measures introduced. The protocols and measures are defined in Arqiva's ISS and were listed in the first audit as follows.

- Principles for Access and Use of Confidential Information
- Protocol for the Identification and Treatment of Different Categories of Confidential Information
- Measures to Ensure the Security of Confidential Information, including
 - Security of Information Storage and Systems
 - Physical Security of Confidential Information
 - Employee Disclosure
 - In the event that Arqiva is a bidder in a Competitive Spectrum Action
 - Staff Training and Awareness

14. Arqiva were asked to review the protocols and measures from the first Audit and to advise whether they remain in place, have changed or have been replaced. Arqiva's response is attached to this document in Annex 1.

Audit Step 2 – The tests and checks

15. The operation of the protocols was considered by review of Arqiva documents, reports, templates and emails for real business activities. This included Arqiva's audit and compliance reports as evidence of the measures being tested. Arqiva's systems for web based training, electronic training records and web based protocols were reviewed 'live' at Arqiva Crawley Court.

16. The tests are considered in the form of questions as set out below;

Do Arqiva....

- Consider information security during organisational restructuring?
- Use appropriate protocols for undertaking sensitive work?
- Handle sensitive information in accordance with the ISS protocols?
- Use appropriate systems for storing sensitive information?
- Use appropriate systems for controlling physical access to secure areas?
- Test that these measures are effective?
- Provide training and awareness of their ISS and the requirements of the Undertakings?
- Consider matters relating to ISS compliance at board meetings?

17. Arqiva supplied written evidence in support of their responses and other evidence was provided for review at Arqiva Crawley Court in January 2017, a schedule is attached as Annex 2.

Audit Step 3 - Evidence

Audit Step 3 provides responses to the questions in paragraph 16.

18. Do Arqiva consider information security during organisational restructuring?

Arqiva provided evidence of ISS consideration during the organisational restructuring during 600 MHz spectrum auction preparations and the creation of the digital platform business unit in 2011. This evidence included emails and letters from the CEO and Directors to staff, process diagrams, compliance briefings, training requirements, guidelines and presentations. Individuals within the MuxCo team were required to sign a letter confirming their understanding of the ISS requirements and their responsibilities following the change. A copy of this letter was provided.

The explanation of the structure was supported by screen shots of the organisational structure from Arqiva's people management software. These included Terrestrial Broadcast, Digital Platforms Management, Digital Platforms Accounts and Client Management.

Arqiva provided evidence of continued consideration through their monthly compliance certification, board papers, scheduled team meetings and minutes.

Arqiva also provided evidence of ISS consideration during the organisational restructuring involving the re-alignment of the Digital Platforms business unit in 2015. This evidence included training requirements and presentation material.

19. Do Arqiva use appropriate protocols for undertaking sensitive work?

Arqiva provided a process diagram which shows how they undertake sensitive work and the flow of information between groups in the organisation. A part of this process is to anonymise client details and maintain secrecy of sensitive information. Arqiva provided evidence of this process in operation for FM commercial radio bid activities in April 2016.

Handling of information during the 600MHz spectrum action followed a process designed to restrict information access. The process and an explanation of the process were provided along with statements which explain the procedures for other confidential work relevant to the undertakings.

Separate to Reference Offers, Arqiva may be required to provide information that is confidential to one customer related to their broadcast transmission service. Arqiva report that *'enquiries from existing customers are raised through the account manager assigned to that customer in the Client Management team. If they require regulated pricing for their service, either for a renewal of an existing service or for changes to a service, this will be passed by the account manager to the regulation team. The regulation team will provide the necessary pricing back to the account manager to pass on to the customer.'* Arqiva provided process diagrams in support of this statement, see paragraph 20.

20. Do Arqiva handle sensitive information in accordance with the ISS protocols?

Arqiva presented process diagram (reference BOP930.2) which shows the movement of information through the various teams within Arqiva and how this information is handled to ensure compliance with the ISS.

Arqiva presented their compliance strategy paper for the second national commercial DAB licence. The paper outlines the steps which Arqiva would need to take for the purposes of compliance which is to maintain separation between:

- i) Arqiva's regulated business team that will be generating the Reference Offer and potentially negotiating Transmission Services agreements with 3rd parties and
- ii) Arqiva's own bid team that will be bidding for the award of the licence.

21. Do Arqiva use appropriate systems for storing sensitive information?

Arqiva report that since 2013 they have received accreditation to the ISO 27001 standard for Information Security Management. Arqiva carries out regular internal audits to confirm the requirements. In addition, Arqiva use external auditors to test the requirements are met. The external audit reports were presented for review at Crawley Court on 27 Jan 2017 and did not contain any non-compliances nor observations in regard of information storage.

Arqiva presented a copy of Arqiva document ISMS4001.2, Information Classification and Handling Standard. The purpose of this standard is to establish a framework for classifying and handling Arqiva data. This maintains the confidentiality, availability and integrity of Arqiva information and assets in accordance with ISO27001, information security policies, standards and the ISS. The use of this standard was evident during the review of Arqiva documents.

Arqiva provided information about the operation and use of customer and personnel information management systems. This included details of the restrictions in access to this information and the ISO 27001 standards in maintaining this security.

Arqiva provided information regarding encrypted PC storage, PC screen locking, clear desk policy and document disposal. PC security is a part of the ISO 27001 standard. The clear desk policy was evident when visiting Arqiva at Crawley Court and secure disposal bins were observed.

Arqiva demonstrated the separation of the data storage systems (Livelink) for the Network Access team, Regulation and Compliance team and the MuxCo team. Arqiva report that access to these systems is controlled and signed off by departmental directors.

Arqiva report that to aid separation of activities, they use different versions of their sales support software (SalesForce) for different parts of the business.

22. Do Arqiva use appropriate systems for controlling physical access to secure areas?

The widespread use of access control systems is evident at Arqiva Crawley Court. Accreditation to the ISO 27001 standard includes physical security measures and is a part of the aforementioned audits.

Arqiva presented electronic reports of internal audits of the access measures in operation. Arqiva presented external audit reports for review at Crawley Court on 27 Jan 2017 and these did not contain any non-compliances nor observations in regard of access control.

23. Do Arqiva test that these measures are effective?

Arqiva test the information security and access security measures with internal and external auditors as noted in the sections above. These tests come under the ISO 27001 accreditation and audit. The audit reports were reviewed at Arqiva Crawley Court.

The effectiveness of the protocols for undertaking sensitive work are considered through regular compliance meetings, internal reports, external reports and signed governance declarations. Arqiva presented documents to support these activities.

24. Do Arqiva provide training and awareness of their ISS and the requirements of the Undertakings?

Arqiva use web based training tools which include ISS and Undertakings Compliances courses for new starters and as refresher courses for existing staff. Arqiva's personnel management systems provide a link to the training systems which allows targeting of training requirements and tracking of completed courses. The training courses include a test and the course is not complete until the test has been passed.

Arqiva provided a story board of the course and showed a live demonstration at their premises on 27 January 2017. The demonstration also showed live schedules detailing each member of staff who had completed each course. The demonstration showed that more than 80 people had completed the course in 2016 and that 20 were outstanding, but within Arqiva's time limits for completion.

Prior to the Digital Platforms Business Unit organisational changes in 2015 Arqiva gave a staff update presentation which included ISS. Arqiva provided this presentation for review.

Arqiva undertake regular compliance reviews which also raise awareness of the ISS and Undertakings. Compliance review presentations from 2011 and 2012 were made available for review.

Arqiva provided a copy of their Code of Conduct September 2015 for review. The code of conduct includes Regulatory compliance and a proforma for the agreement to and signature of staff members.

Staff awareness of ISS requirements is evident in the meeting agenda and minutes from monthly compliance meetings with the Radio business team. Arqiva provided these documents for review. Arqiva note that they hold monthly radio compliance calls to review radio business which may relate to obligations from the Undertakings and any enhanced measures that are required for Reference Offers and Ofcom licence applications

25. Do Arqiva consider matters relating to ISS compliance at board meetings?

Arqiva provided a copy of a recent monthly compliance certificate submitted to the Arqiva board. This report is set out as a proforma and includes sections specific to the following parts of the undertakings 5.1, 6.1, 8.2.1, 9.1, 10.13, 9.3, 10.1-10.3, 11, 11.3, 12.1, and 12.2. The report also includes sections for Adjudicator referred items, the handling of confidential information from customers and a signature for the compliance declaration.

In addition to monthly compliance certificates, the Arqiva board may be presented with papers specific to activity within Arqiva. Arqiva presented a copy of a paper to the Arqiva Ltd Board setting out the steps for Regulatory Compliance in regard of work associated with the DAB 2nd National Licence.

The Arqiva board publish an annual compliance report pursuant to the requirement set out in paragraph 18.1 of the Undertakings. Arqiva presented a copy of the annual compliance report issued 10 October 2016.

Annex 1: Arqiva's explanation of the current status of the ISS measures compared to those in place at the time of the first audit in 2011.

The evidence reference relates to the documents supplied by Arqiva or the site observations set out in Annex 2

2011 Audit Area	Status	Alternative Evidence	Evidence Reference
ISS Part 2: Principles for Access and Use of Confidential Information a) Managers' personal objectives regarding ISS	✂	✂	8, 18, 29, 30, 31, 37, 38
b) Distinction between business activities and for the purposes of audit evidenced regarding Arqiva MuxCo and Spectrum Planning	✂	✂	3, 4, 5, 6, 7, 8, 39, 45
c) Bid team management regarding spectrum auction	✂	✂	9, 10, 11, 12, 13, 14, 15, 16, 17, 18
d) Separation of MTS and NA account teams and confidential information.	✂	✂	25, 26, 27
ISS Part 3: Protocol for the Identification and Treatment of Different Categories of Confidential Information a) For Very High Risk Confidential Information the Arqiva protocol specifies additional measures.	✂	✂	23 (and evident on sample documents viewed at Arqiva Crawley Court)

2011 Audit Area	Status	Alternative Evidence	Evidence Reference
<p>ISS Part 4: Measures to Ensure the Security of Confidential Information</p> <p>Security of Information Storage and Systems</p> <p>a) Measures relate to the restricted access and maintenance of records specific to electronic information and storage systems.</p>	✂	✂	32, 33, 34, 35, 36, 39
<p>Physical Security of Confidential Information</p>	✂	✂	32, 33, 34, 35, 36, 45
<p>Employee Disclosure</p>	✂	✂	29, 30, 31, 37, 38
<p>In the event that Arqiva is a bidder in a Competitive Spectrum Action</p> <p>a) Staff responsible for a bid related to a Spectrum Auction will be distinct from those required to access and use confidential information related to a customer or prospective customer where they may be in competition.</p>	✂	✂	9, 10, 11, 12 13, 14, 15, 16, 17, 18

2011 Audit Area	Status	Alternative Evidence	Evidence Reference
<p>Staff Training and Awareness</p> <p>a) Arqiva state three steps regarding protocols and measures which relate to initial and on-going staff awareness and training and annual performance reviews.</p>	✂	✂	37, 38
<p>ISS Protocols and Measures - The Undertakings</p> <p>A documented programme of test was not evident nor was the requirement for testing documented in the adopted measures. In reference to these observations two recommendations were made:</p> <p>1) That either the ISS document is updated to reflect current practices or a separate document is produced which demonstrates how the strategy has been put into practice.</p> <p>2) That tests related to the protocols and measures are documented and that the results of these tests are recorded.</p>	✂	✂	27, 41

Annex 2: Schedule of the documents, information and evidence provided by Arqiva.

Items 1 to 36 are redacted

The following were reviewed on site at Arqiva Crawley Court

Items 37 to 45 are redacted

Annex 3- ISS Protocols and Measures - The Undertakings

Section 16.2 of the Undertakings states that Information Strategy shall require Arqiva to implement appropriate measures described as:

- 16.2.1 to ensure the security of Arqiva's information storage systems and data systems (including data collection, storage and archiving), particularly where confidential information referred to in paragraph 16.1 is stored in systems shared between business units;
- 16.2.2 to ensure the physical security of confidential information referred to in paragraph 16.1;
- 16.2.3 to ensure that an employee of one business unit does not disclose or use the confidential information referred to in paragraph 16.1 of which the employee had become aware whilst working for another business unit;
- 16.2.4 to ensure the security of the confidential information referred to in paragraph 16.1 in the event that Arqiva is a bidder in a spectrum auction in competition with a Customer or prospective customer; and
- 16.2.5 to ensure that staff receive adequate training in relation to the Information Security