

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 July – 30 September 2013

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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.

[\[http://www.competition-commission.org.uk/inquiries/ref2007/macquarie/pdf/notice_undertakings.pdf\]](http://www.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, 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 to 30 September 2013. 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, Jon Trowsdale as Deputy on 2 day/week basis. Megan Donald is Executive Assistant and Office Manager on a part time basis.

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

Office facilities and IT support are provided by Ofcom.

2.2 Budget

The budget for 2013/14 has been agreed at £532,294 for operations and £470,000 for contingency (compared to £532,162 and £470,000 contingency this year). Operations to date this financial year are within budget and there has been no recourse to contingency.

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 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

No further guidance has been published during this period.

3.2 Disputes

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

4 Publication of Reference Offers

Arqiva reference offers can be found at:

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

5 Reporting and Audit

5.1 Reporting on Digital Switchover Progress

Now complete.

5.2 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 2011 to 30 June 2012 are available on Arqiva's website:

<http://arqiva.com/documentation/regulatory/network-access-and-managed-transmission-services/FY12%20Regulatory%20Accounts.pdf>

And the methodology:

<http://arqiva.com/documentation/regulatory/corporate/RAPM%202013-24-06.pdf>

The methodology for the 2012/13 accounts has been agreed in this period, the accounts prepared and audited with publication due by the end of October.

5.3 DSO Audit

The final DSO audit for the period 1 July 2013 until the end of DSO has been commissioned and will take place November 2013.

5.4 Compliance Report

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

The 2013 report has been delivered to the OFT.

There was one non-compliance with the terms of the Undertakings in that a letter to a radio company advising them of their options on contract expiry missed the required 12 month timescale. The matter was swiftly remedied and the customer not disadvantaged.

5.5 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.

5.6 Information Security Strategy

Paragraph 16.2 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>

The BBC tender process, referred to below in Paragraph 6.3, has brought the need for separation between NA and MTS within radio into focus and Arqiva have developed procedures under the ISS to address this. The Adjudicator commissioned an audit of these arrangements which completed in September 2012 and was satisfactory.

5.7 DAB MOU

The Adjudicator is a signatory to the MOU for funding of radio switchover as the Office of the Adjudicator has an overseeing role in this process. The full text of the MOU is at:

<http://www.culture.gov.uk/publications/9197.aspx>

The MOU requires Arqiva to produce a Reference Offer for Transmission Services. The Reference Offer was delivered in early October 2013. The Adjudicator has commissioned an audit of the Reference Offer to ensure that it meets the requirements of the Undertakings and guidance. The report is presently in draft form and has not raised any significant concerns.

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 proposes to publish a summary document early next year which covers the aspects which constitute current guidance. This work has been delayed by the effort needed for True Up.

6.2 DSO “true –up”

Following the completion of DSO, there is a need to reconcile the actual costs incurred with the original forecasts and ensure that the split of any savings between Arqiva and the multiplex operators is according to the agreed arrangement. The multiplex operators have asked the Adjudicator to oversee this work on their behalf rather than each conducting the same exercise individually. The task has been initially to work with the broadcasters to develop a common understanding of the True Up process. This stage is complete and the task is now to produce the brief for the audit which will take place in late November. Once the audit is completed, the Adjudicator's role in True Up ceases unless there is a need to adjudicate a dispute over the settlement.

6.3 BBC Radio procurement

The BBC has concluded its procurement exercise and has re-appointed Arqiva as its transmission supplier. The procurement exercise has resulted in a considerable workload for the Adjudicator. The Undertakings were designed to cope with situations where there was no competition; in this case they had to be used to ensure that Arqiva could be both an NA supplier to all bidders and a bidder itself without being advantaged or disadvantaged.