

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 October – 31 December 2012

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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 October to 31 December 2012. 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 proposed, subject to consultation, 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.

Confidential information redacted

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/corporate/documentation/referenceoffers>

5 Reporting and Audit

5.1 Reporting on Digital Switchover Progress

Under Paragraph 17 of the Undertakings, Arqiva is obliged to provide a monthly report on DSO progress. The reports are being received monthly. In this period the final report was received marking the end of Digital Switchover

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://www.arqiva.com/corporate/documentation/regulatory/>

5.3 DSO Audit

The DSO audit for the period 1 July 2011 until 30 June 2012 has been completed. During this period there has also been an audit of the corporate overhead charge which forms part of the DSO spend. These reports are shared with the BBC, SDN and D3&4 but are not published.

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 2012 report has been delivered to the OFT.

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 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 6.4, 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 has commissioned an audit of these arrangements which completed in September 2012 and was satisfactory. The audit report has been delivered to the BBC.

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>

6 Planned future activity

6.1 Guidance

The Adjudicator has now 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.

6.2 Radio Network Access project

The conclusions of the report were summarised in the last Adjudicator's report. After a review of the detail behind the conclusions, it is not intended to publish the full report at this stage but to revisit it in 2013.

6.3 DSO "true –up"

As DSO nears its end, there is a need to reconcile the actual costs incurred with the original reference offers and ensure that the split of cost 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. Arrangements for this are being put into effect.

6.4 BBC procurement.

The BBC has started a procurement exercise for their radio transmission contracts, which expire in October 2013. Arqiva are both a bidder and a provider of NA and, as such, will need to provide quotations for NA to other bidders. The Adjudicator is working closely with the BBC and Arqiva to ensure that the requirements of Information Security and Network Access offers as set out in the Undertakings are complied with. Within this period the Adjudicator has conducted an audit of the special arrangements for the BBC process and found them to be satisfactory.

6.5 Competition Commission review.

The CC has conducted a review of the effectiveness of Undertakings as a remedy and, as part of this, the Arqiva Undertakings were reviewed. The report is now published at:

<http://www.competition-commission.org.uk/governance/specialist-groups/remedies-standing-group>

The document is a PDF on this page entitled "Understanding Past Merger Remedies 2012".