

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 January– 31 March 2011

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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 [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 January 2011 to 31 March 2011. 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 Swalwell has taken over as Executive Assistant and Office Manager whilst Clare Gemmell is on a sabbatical.

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

2.2 Budget

The budget for 2010/2011 has been set, following consultation, at £529,188 for operations and £470,000 for contingency. The operations budget represents a 13.3% reduction on last year's budget.

Operations to 31 March were within budget and no contingency has been used. Yearend figures are currently being prepared and will be audited by an external auditor

A budget for 2011/12 has been set, following consultation, at £532,926 for operations and £470,000 for contingency (this includes the increase in VAT to which most of the budget is subject).

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>

and the Network Access Rate Card is available at:

http://www.arqiva.com/corporate/pdf/ReferenceOffers/NA_Rate_Card_2010-11_publication_version.pdf

5 Reporting and Audit

5.1 Reporting on Digital Switchover Progress

Under Paragraph 17 of the Undertakings, Arqiva is providing monthly reports on DSO progress.

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 30 June 2009 to 30 June 2010 are available on Arqiva's website:

http://www.arqiva.com/corporate/pdf/documentation/MUKBL%20NA_MTS_Financial_Statements_2010.pdf

And the explanatory notes on:

<http://www.arqiva.com/corporate/pdf/documentation/RAPAMs%202010.pdf>

5.3 DSO Audit

Arqiva is also obliged to undertake an annual audit of DSO expenditure as set out in Paragraph 14 of the Undertakings. The scope and format of the audit has been set by the Adjudicator and the stations to be audited selected similar to the previous period. The audit took place in November and the results were made available to the BBC, SDN, D3&4, Ofcom and OFT at the end of Jan 2011.

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 compliance report was delivered to the OFT at the end of November 2010.

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.

During this period the Adjudicator commissioned an independent audit of the strategy. The final audit report will be published during May 2011 but the interim report received by the Adjudicator was satisfactory.

6 Planned Future Activity

6.1 Guidance

The Adjudicator has now issued guidance covering Paragraphs 6 and 9-12 of the Undertakings. The adjudicator is considering whether further guidance is required for Paragraph 6 of the Undertakings (sale of transmitter equipment).

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 Future Activity

The Adjudicator has commissioned an assessment of the total of Network access charges derived from the radio rate card and television contracts against the total recovery permitted calculated from the Regulated Asset Base, WACC and relevant costs. The point in time for this assessment will be post analogue television switch-off but pre any significant change in radio analogue or DAB.

This project will check the actual recovery of costs against the permitted recovery and give a baseline for future work on the effects of the removal of some or all of the analogue radio network. The analysis of the post analogue radio situation will not be due until the future of radio becomes clearer.