

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 April 2016 – 30 June 2016

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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 April 2016 to 30 June 2016. 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 assists the Adjudicator on an occasional basis with audit and similar tasks and is able to stand in for the Adjudicator should this be necessary.

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 had 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. Expenditure for the year 15/16 was £351,167

An operational budget for 2016/17 has been agreed at £476,872 with contingency of £470,000. Expenditure to the end of June was £83,375.

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.

Reference offers for FM transmission from Glasgow and Paisley have been published.

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 2014 to 30 June 2015 are available on Arqiva's website:

<http://www.arqiva.com/documentation/regulatory/index.html>

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. Later in the year the Adjudicator will audit the new arrangements.

5.5 DAB

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 concluded that the reference offer had been prepared in line with current guidance.

In 2014 a revised plan for rollout emerged and the MOU has been replaced. The Adjudicator is not a signatory 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 Audits

The Adjudicator planned two audits for 2016. The first, as noted above, will be to audit the revised Information Security arrangements following an Arqiva reorganisation.

The second was to audit some sample sites from the KEEP database. This database records the occupancy of sites (antennas, etc) and is the basis for dividing costs when calculating the Network Access charge.

Six sites were audited by Jon Butler on behalf of the Adjudicator. The audit covered a comparison of what antennas were on the structures compared with the KEEP record, the allocation of floor space to users and a comparison of agreed electricity consumption with equipment consumption. Both broadcast antennas and those used for telecommunications (non-broadcast applications) were checked as the allocation of charges is across all occupiers, not just broadcast.

The result from the initial audit was:

- broadcast antennas were substantially correct,
- there were significant discrepancies in the records relating to telecommunications antennas
- allocation of floor space was reasonable
- allocation of electricity consumption was reasonable with some discrepancies to investigate.

As a result of the audit findings, the Adjudicator requested some further work on the impact of the discrepancies in telecommunications antennas on broadcast customers. The result of this analysis was that the financial impact was very small and largely netted out, (between antennas present, but not recorded and those recorded, but not present).

The Adjudicator requested an audit of a further sample of six sites which has also revealed a similar pattern. Arqiva have now commenced a project to review and improve the recording process and to improve the data accuracy. The Adjudicator will publish the audit reports in due course.

6.3 700 MHz clearance.

The Adjudicator has no formal role in the 700MHz clearance programme but some aspects will come within the remit.