

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 April 2017 – 30 June 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 April 2017 to 30 June 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 the financial year was £396,461 with no call on the contingency budget.

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

Expenditure to the end of June in the preset financial year is £83,799

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.

The Adjudicator has noted press reports suggesting an sale of Arqiva. This should not affect the ongoing obligations of Arqiva under the Undertakings, but the Adjudicator will obviously be monitoring the situation.

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.

A new reference offer for Torbay has been published in this period.

<https://www.argiva.com/documentation/reference-offers/broadcast-radio/Torbay%20FM%20Local%20Commercial%20Radio%20Licence%20-%20Reference%20Offer.pdf>

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

[https://www.argiva.com/documentation/reference-offers/broadcast-radio/Argiva Radio Rate Card for Network Access 2017-18.pdf](https://www.argiva.com/documentation/reference-offers/broadcast-radio/Argiva%20Radio%20Rate%20Card%20for%20Network%20Access%202017-18.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.argiva.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 took place in 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 and the detailed report is an Annex to the Jan-Mar Adjudicator's report.

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, there will be 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. A new commercial manager has now been appointed and taken up the role. Mr Finchen has returned to his previous role. No compliance issues have arisen.

6.4 Analogue Radio.

Whilst no date has been proposed for analogue radio closedown, The Adjudicator is considering the implications of this on Network Access and Managed Transmission charges. This work will be published as a consultation later in the year.