

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 January 2024 – 31 March 2024

1. Background

Back in 2008, Arqiva took over the only other major company providing transmission services to radio and TV broadcasters (i.e. National Grid Wireless).

At the time, the Competition Commission judged the deal “...may be expected to result in a substantial lessening of competition...and...may be expected to result in...adverse effects...”. After consulting with broadcasters and other stakeholders, the deal was allowed to go ahead on the basis of a detailed set of promises made by Arqiva. These are known as *the Undertakings*.

One requirement of the Undertakings was the setting up of the Office of the Adjudicator and the appointment of a Transmission Adjudicator. While that appointment is made by Ofcom, the Adjudicator takes decisions independently of Ofcom, Arqiva and UK broadcasters.

The Office of the Adjudicator exists to ensure the promises in the Undertakings are being kept and followed, to issue guidance and directions to Arqiva and to adjudicate in certain disputes between Arqiva and its customers.

The goal of the Undertakings is to ensure any substantial lessening of competition does not result in adverse effects and help replicate the outcomes that would be expected in a competitive market.

The Undertakings can be found at <https://www.ota-bts.org.uk/undertakings.html>.

Although the Adjudicator has independence when carrying out their functions, the Undertakings give Ofcom certain roles (e.g. setting the budget each year).

Finally, alongside the Adjudicator, overarching responsibility for compliance with the Undertakings sits with the Competition and Markets Authority.

2. Office of the Adjudicator

2.1 The Adjudicator and their team

From 1 January 2024 to 29 February 2024, Jon Butler was the Transmission Adjudicator. At the end of February, Jon stepped down and from 01 March 2024 Glyn Jones took up the role.

Megan Donald continues in her role as executive assistant and office manager.

Legal advice is provided by Alice Wallace-Wright of Hogan Lovells International LLP.

Megan is based at Ofcom's offices at Riverside House. Glyn has access to a desk and meeting rooms in Ofcom's building when needed.

Website: www.ota-bts.org.uk

Adjudicator: glyn.jones@ota-bts.org.uk

Executive Assistant megan.donald@ota-bts.org.uk

2.2 Stakeholder Meetings

During this period, Jon Butler and Glyn Jones have held meetings either face-to-face or via video conference using Teams with:

Arqiva	Bauer	BBC
Comux	D3&4	Folder Media
Global	News UK	Ofcom
Sabras	SDN	

As part of his induction, Glyn Jones has sought to contact all of Arqiva's radio and television customers with contracts covered by the Undertakings.

More than half of stakeholders are small radio companies running a handful of stations (or in some cases, just one). Many of these companies, when contacted by phone or email, have explained they currently have low awareness of the Undertakings and the role of the Transmission Adjudicator and would welcome a short briefing to provide information. This is something the Adjudicator intends to deliver.

In the face-to-face and video meetings, stakeholders were asked to identify what they see as the key issues.

The fact that the role of the Adjudicator should be determined and defined solely by the Undertakings was generally recognised and endorsed. Similarly, all stakeholders agreed that the Undertakings should be applied consistently, with independence and fairness to both Arqiva and its customers.

In individual meeting, stakeholders highlighted a range of issues – some very specific and others with a broader application. The list that follows summarises some of the general issues, often raised by more than one stakeholder. For the avoidance of doubt, the list reflects the views of stakeholders rather than the Transmission Adjudicator or the Office of the Adjudicator.

By the nature of the question (i.e. asking stakeholders to highlight their key issues) it was expected that customers' responses would tend to highlight a desire for lower prices and any perceived gaps in the quality of services. However, many customers also explained they regard Arqiva as a trusted provider of services which they would not be able to provide themselves.

- While several stakeholders expressed positive views about the responsiveness and quality of service from Arqiva and its teams, others voiced reservations about the speed of response to technical outages, billing queries and questions about contract renewals.
- Concern about the Guidance that RPI should be the basis of annual price increases and the impact of the recent period of high inflation on customers' bills.
- The longer-term impact of broadcasters reducing the use of FM and/or DTT on the affordability of broadcast transmission under current business models and pricing.
- The level of transparency underpinning the calculation of Network Access pricing and price levels.
- The level of transparency underpinning the calculation of Managed Transmission Services pricing and price levels.
- Uncertainty about the extent to which prices derived in line with the Undertakings can be negotiated.
- The usefulness of the information currently provided in the Regulatory Accounts that Arqiva is required to publish each year.
- The timing of any review of the Weighted Average Cost of Capital which affects some of Arqiva's prices.

In previous reports, the fact a company has met with the Adjudicator has been redacted. For this quarterly report, all stakeholders have agreed to the names of their organisations and companies being published and are aware that an anonymised summary of issues raised is being included.

As part of preparing the report, Arqiva was given the opportunity to comment on this section and has provided the following response - "We look forward to an ongoing dialogue with the Adjudicator on the issues that he has highlighted and we will continue to take seriously and engage directly with customers on any issues which may arise as part of our ongoing contractual service agreements".

2.3 Budget

Expenditure 1 April 2023 to 31 March 2024 was £622,960 against an annual budget of £497,188. In addition, a contingency of £470,000 was available.

After the 2023/24 budget had been set, there were two changes of Adjudicator during the year with some periods of overlap plus additional legal and recruitment costs. These resulted in total expenditure exceeding the budget.

The operational budget for 1 April 2024 to 31 March 2024 has been set by Ofcom at £698,402. The contingency remains at £470,000.

The Undertakings require Arqiva to fund the Office of the Adjudicator.

3 Routine Reporting Items

3.1 Arqiva's performance

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.

3.2 Disputes

In this period there have been no disputes requiring the use of the formal Dispute procedure described in Appendix 2 of the Undertakings.

3.3 Guidance

During this period, no new Guidance has been issued.

The Adjudicator has previously issued Guidance covering Paragraphs 6 and 9-12 of the Undertakings and is of the opinion that no Guidance is required in relation to Paragraph 3.

The Adjudicator will continue to monitor compliance with the Undertakings and existing Guidance and will consider whether any further Guidance is required.

Documents related to Guidance previously issued by Ofcom and the Office of the Adjudicator can be found on the website at <https://www.ota-bts.org.uk/>.

3.4 Publication of Reference Offers.

No new reference offers have been published in this period. Previous ones can be found at <https://www.arqiva.com/documentation>.

The 2023-24 radio rate card for site access can be found at the above link within the “Reference Offers” tab.

3.5 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 Accounting Principles and Methodologies (RAPAMs) which set out how the accounts are produced can be found at the link below, together with the Regulatory Accounts for the period 1 July 2022 to 30 June 2023 and prior years. The RAPAMs and any changes to them are approved each year by the Adjudicator.

<https://www.arqiva.com/documentation> under the “Regulatory” tab.

3.6 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 plus details of any breaches and the steps taken to remedy them.

The 2023 report has been delivered to the CMA, Ofcom, and the Adjudicator. There were no instances of non-compliance.

3.7 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.

3.8 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 under the “Corporate” tab at <https://www.arqiva.com/documentation>.

The Adjudicator audits the Information Security Strategy from time to time. The most recent audit was in 2022 and is reproduced as appendix A to the quarterly report for the period 1 April 2022 to 30 June 2022.

<https://www.ota-bts.org.uk/documents/OTA-BTS-OFT-period-55.pdf>.

3.9 Local Commercial DAB Agreements Regulatory Charges Approach

The quarterly report for the period 1 October 2023 to 31 December 2023 outlined steps taken by Jon Butler to review Arqiva's processes linked to the renewal of the transmission contracts of some local DAB digital radio multiplexes.

Details can be found in section 5.5 of the previous report at <https://www.ota-bts.org.uk/documents/OTA-BTS-OFT-period-61.pdf>.

4 Feedback

The Undertakings require certain things to be included in each quarterly report and for the reports to be sent to the Competition and Markets Authority and Ofcom.

In addition, the reports are published on the website of the Office of the Adjudicator at <https://www.ota-bts.org.uk/reports.html>.

Any stakeholder comments about this report, its contents or suggestions for how it could be improved would be welcome and should be emailed to glyn.jones@ota-bts.org.uk.