

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 January 2020 – 31 March 2020

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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 January 2020 to 31 March 2020. This report will be published on the website of the Adjudicator (www.ota-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 and Jon Butler as Deputy, both are part time. Megan Donald is Executive Assistant and Office Manager, also on a part time basis.

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

The Adjudicator and Deputy have vacated the office at Ofcom but Megan remains there. IT is now directly provided with a resulting change in web and email addresses.

During the present Covid-19 crisis, the Office is continuing operation on a dispersed basis with contact being by telephone or video conference. Scheduled meetings with Arqiva and others have continued on this basis.

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Exec asst megan.donald@ota-bts.org.uk

2.2 Budget

Expenditure from 1 April 2019 to 31 March 2020 was £397,027 against the annual budget of £473,872. The contingency of £470,000 has not been used.

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.

Arqiva intends to sell some 7,000 telecommunications sites. These are not used for broadcast and therefore fall outside of the Undertakings. However, there are some 112 sites that Arqiva wishes to divest as part of this transaction that have a broadcast presence, mainly radio. The Adjudicator will endeavour to ensure that the interests of the broadcast customers on these sites will enjoy equivalent protections.

3 Disputes and Guidance

In this period there have been no disputes requiring the use of the formal dispute procedure. Further information on Guidance can be found in Paragraph 6.1 of this document.

4 Publication of Reference Offers.

No new reference offers have been published in this period. Previous reference offers can be found at:

<https://www.arqiva.com/documentation/reference-offers/>

The 2019-20 radio rate card for site access can be found at:

[https://www.arqiva.com/documentation/reference-offers/broadcast-radio/Argiva Radio Rate Card for Network Access 2019-20.pdf](https://www.arqiva.com/documentation/reference-offers/broadcast-radio/Argiva%20Radio%20Rate%20Card%20for%20Network%20Access%202019-20.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 Regulatory Accounting Principles and Methodologies (RAPAMS) which set out how the accounts are produced and are approved by the Adjudicator can be found at the link below, together with the regulated accounts for the period 1 July 2018 to 30 June 2018.

<https://www.argiva.com/documentation/regulatory/>

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 2019 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. Any impact resulting from the divestments referred to above will be assessed by the CMA.

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.argiva.com/documentation/corporate/arqiva-information-security-strategy-version-1.0.pdf>

The Adjudicator audits the Information Security Strategy from time to time. An audit was done earlier this year and the full report attached to the March 2019 Adjudicator's quarterly report. A further audit will be done following completion of Arqiva's internal reorganisation necessitated by the proposed divestments.

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.

<https://ota-bts.org.uk/guidance/>

6.2 Audits

Arqiva use a database system called KEEP to maintain site infrastructure records. The KEEP database records a variety of site data which includes information relating to the height, type and location of antenna systems. Antenna information from KEEP is used to determine the loading which the antenna system places upon the site mast or tower. This loading (windloading) is used to calculate a part of the charges to the users of the antenna systems.

In March 2016, the Office of the Adjudicator BTS undertook the first audit of the accuracy of the KEEP data, the second audit was undertaken in June 2016. Twelve transmitter sites were visited for the assessment of 1343 antennas, the electricity use of 56 transmitter systems and the accommodation allocated to 12 transmitter systems. The audit tests showed that 256 antenna observations were not reasonably consistent with the KEEP records while both the electricity use and accommodation use were reasonably consistent with Arqiva's records. The 256 antennas were predominantly microwave dishes for non-broadcast use and while these data inconsistencies may impact the calculation of some charges to Broadcasters the overall impact was found to be minimal.

In May 2016, Arqiva produced an action plan to address inconsistencies in the antenna records and in September 2017 a third audit of six sites was undertaken by the Adjudicator. The selection of these six sites includes two which were included in a previous audit, two which had been surveyed by Arqiva and two which had neither been audited or surveyed.

The site observations in the September 2017 audit showed a similar number of discrepancies to Arqiva's KEEP records when compared to previous audits in March 2016 and June 2016. In the September 2017 audit, 743 site observations were compared to Arqiva's KEEP records. Of these 743 antennas, 136 were recorded as not reasonably consistent with Arqiva records

Arqiva worked with the Adjudicator in the analysis of the findings and noted that ... *'Despite positive action since the last audit, Arqiva is disappointed that this audit has picked up several data record issues and we recognise that there is still work to do to carry on improving our antenna data records. We note that the observations have a very small impact on some customer charges, both positive and negative.....'*

The full audit report was provided as an annex to the December 2017 report.

A further KEEP audit has been completed and shows significant improvement on previous audits. The full report was attached as an Annex to the Q4 2018. The 2019 audit is in progress and the results will be published in the Q2 2020 report.

6.3 700 MHz clearance.

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