

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 January 2021 – 31 March 2021

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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 2021 to 31 March 2021. 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 based there. ICT 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 online.

Website: www.ota-bts.org.uk
Adjudicator alan.watson@ota-bts.org.uk
Deputy jon.butler@ota-bts.org.uk
Exec asst megan.donald@ota-bts.org.uk

2.2 Budget

Expenditure from 1 April 2020 to 31 March 2021 was £413,852 against the annual budget of £475,600. The contingency of £470,000 has not been used.

The budget for 2021/22 has been set at £468,400 with a contingency of £470,000.

2.3 Stakeholder Meetings

During this period regular communication with stakeholders has continued by phone and video conference and includes 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 concluded the sale of some 7,000 telecommunications sites in July 2020²⁰²⁰ to Spanish operator Cellnex. The vast majority of these are not used for broadcast and therefore fall outside of the Undertakings. However, there are some 112 sites that Arqiva has divested as part of this transaction that have a broadcast presence, mainly radio. Arqiva has entered into arrangements with Cellnex to ensure continued access to those sites. The Adjudicator has reviewed those access agreements to ensure that the interests of the broadcast customers on these sites will enjoy equivalent protections and has concluded that they are satisfactory.

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 ones can be found at:

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

The 2020-21 radio rate card for site access can be found at:

[https://www.argiva.com/documentation/reference-offers/broadcast-radio/Arqiva Radio Rate Card for Network Access 2020-21.pdf](https://www.argiva.com/documentation/reference-offers/broadcast-radio/Arqiva%20Radio%20Rate%20Card%20for%20Network%20Access%202020-21.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 2019 to 30 June 2020.

<https://www.arqiva.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 2020 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>

The Adjudicator audits the Information Security Strategy from time to time. The full report of the last audit is attached to the March 2019 Adjudicator's quarterly report. A further audit will be done on completion of Arqiva's internal reorganisation following the divestment of the telecoms sites business. This was planned for early 2021, but to meet COVID restrictions, has been deferred to the autumn of 2021.

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 if necessary.

The Adjudicator holds a series of documents produced by Ofcom which cover detailed guidance for producing reference offers. Some of this is specific to the historic high power DTT reference offer and so the Adjudicator has 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.

The first site audit was undertaken in March 2016 at six transmitter sites in the West Country and South Wales. This included the identification of 602 antennas, reviewing electricity usage of 26 transmitter systems and the accommodation allocated to four transmitter systems.

The second site audit was undertaken in June 2016 at six transmitter sites in the West Country and the South of England. This included the identification of 741 antennas across six sites (seven structures), reviewing electricity usage of 30 transmitter systems and the accommodation allocated to eight transmitter systems.

The third site audit was undertaken in September 2017 at six transmitter sites in the South of England, the Midlands and Wales. This included the identification of 743 antennas across six sites.

The fourth audit was undertaken in September 2018 at four transmitter sites in the South of England and Scotland. This included the identification of 393 antennas on seven masts/structures across four sites. All sites had previously been surveyed to improve the quality of the KEEP records.

A fifth audit was undertaken between October 2019 and January 2020 at sites in South Wales, the Midlands and the Isle of Wight. This included the identification of 373 antennas across four sites. Two of the four sites had previously been surveyed by Arqiva's suppliers as a part of a study into improving the quality of the KEEP records.

The accommodation and electricity usage were found to be satisfactory in the first two audits and have not been undertaken since.

The results of this fifth audit and previous audit results are shown in the table below.

Audit	Year	antenna samples	reasonably consistent	not reasonably consistent	observations
Audit 1	Mar-16	602	421	128	53
Audit 2	Jun-16	734	520	128	66
Audit 3	Sep-17	743	537	136	70
Audit 4	Sep-18	393	339	12	42
Audit 5	Oct-19	373	297	30	46

We note that all sites selected for audit 4 were recently surveyed by Arqiva, for audit 5 only half the sites were recently surveyed and so a higher proportion of 'not reasonably consistent' results can be anticipated. We note continued improvement in the accuracy of Arqiva's KEEP records.

The 2018 KEEP audit showed significant improvement on previous audits. The full report was attached as an Annex to the Q4 2018 report. The 2019 audit has also been completed but the Covid19 crisis has delayed the completion of analysis of the results. The final report was attached to the Q3 2020 report.

Due to the epidemic, all but essential site visits are unwise so a further KEEP audit this year will not take place. Arqiva are replacing the KEEP database and the next audit will take place late 2021 to check both the transition of data and the accuracy by site visits.

6.3 700 MHz clearance.

The Adjudicator has no formal role in the 700MHz clearance programme, but some aspects do come within the remit. This project is substantially complete and will not be mentioned in future reports.