

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 April 2024 – 30 June 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

Glyn Jones has been Transmission Adjudicator since 1 March 2024. Megan Donald is the Executive Assistant and Office Manager. Both work part time.

Alice Wallace-Wright of Hogan Lovells International LLP provides legal advice.

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.

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

2.2 Key Events in the Quarter & Stakeholder Meetings

In May, Ofcom published “Future of TV Distribution”, an initial report to Government about the market context for broadcast transmission as consumers migrate to online platforms. The report considers consumer behaviours, technology trends and the economic pressures on TV broadcasters. Ofcom highlights that “the consensus in the broadcasting industry that DTT should continue indefinitely has broken” and sets out some possible scenarios. Given that Arqiva’s infrastructure is shared by TV and radio customers, the report notes that any transition away from DTT raises issues about “the sustainability of analogue and DAB radio broadcasting”.

Also in May, the Adjudicator attended two events where the future of DTT was discussed. The Westminster Forum organised “The future for television distribution in an online world – Priorities for regulation” with contributions from DCMS, Ofcom, TV broadcasters and other stakeholders. At “TV the Bigger Picture”, a conference organised by the DTG, speakers included the then Secretary of State at DCMS, Julia Lopez MP, and Ofcom’s Group Director of Strategy and Research, Yih-Choung Teh. While work to decide policy is at an early stage, at both events TV broadcasters articulated an enthusiasm for the transition to online and away from DTT.

Some stakeholders, from both the television and radio sectors, have suggested the Transmission Adjudicator should play an active role in developing thinking about these issues. They have argued, correctly, that even a gradual move away from DTT raises issues about the economics and pricing of broadcast transmission. While recognising these arguments, the Adjudicator’s current view is that both DCMS and Ofcom have started significant and well-resourced work. Unlike the Adjudicator, they are in a position to develop and implement policy. Given the importance of this issue for Arqiva and all of its customers, the Adjudicator urges all stakeholders to engage directly with DCMS and Ofcom and ensure their views are taken into account.

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

Arqiva	BBC	Central FM
CMA	Communicorp	DTG
Lyca	Multiplex Broadcasting Services NI	
Nation Radio	Ofcom	Premier Christian Media
Radio Exe	SDN	

Many of these meetings focussed on the same or similar issues to those summarised in the previous edition of this report <https://www.ota-bts.org.uk/documents/OTA-BTS-OFT-period-62.pdf>. As that report noted, many of Arqiva's customers are either unfamiliar or unclear about their rights as defined in the Undertakings. While this is particularly true of many smaller radio customers it is not limited to that stakeholder segment.

During this quarter, the DTT multiplex licensee D3&4 submitted a 56-page report on network access charges to the Adjudicator which it had commissioned from an external firm of policy and regulatory consultants. The report makes a case that the Adjudicator should intervene and initiate a series of actions, including a review of some existing guidance. The Adjudicator is considering the report within the framework of the Undertakings.

As noted in the last report, the new Transmission Adjudicator is considering appropriate ways to deliver the accountability and transparency required by the Undertakings. That includes the steps taken and procedures in place to ensure that decisions are taken fairly and impartially. As part of this work Glyn Jones has completed a declaration of interests which is published on the website at <https://www.ota-bts.org.uk/interests.xhtml>.

2.3 Budget

Expenditure from 1 April 2023 to 30 June 2024 (Q1) was £192,800 against an annual budget of £698,402. This is broadly in line with expected expenditure and reflects the phasing of the budget. In addition, a contingency of £470,000 is available if needed.

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 were published in this period. However, early in July Arqiva updated the “Radio Rate Card for Network Access” which is used to generate pricing proposals for some customers when Arqiva judges it is appropriate.

The 2024/25 rate card can be found at [https://www.arqiva.com/documentation/reference-offers/broadcast-radio/Arqiva Radio Rate Card for Network Access 2024-25.pdf](https://www.arqiva.com/documentation/reference-offers/broadcast-radio/Arqiva%20Radio%20Rate%20Card%20for%20Network%20Access%202024-25.pdf)

and other reference offers are available at <https://www.arqiva.com/documentation/>.

3.5 Regulatory Accounts

Each year, Arqiva publishes a set of Regulatory Accounts as required by Section 15 of the Undertakings and in the format provided in Appendix 14. Arqiva’s finance team are working on the accounts which will be published this autumn with input from the audit firm PWC and the Adjudicator. 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.

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

Paragraph 15.10 of the Undertakings sets out that from time to time the Adjudicator can direct Arqiva to provide additional or alternative financial information or remove the obligation to publish Regulatory Accounts. The Transmission Adjudicator plans to hold a consultation this autumn about the Regulatory Accounts to establish how they are used by Arqiva and its stakeholders and whether there should be changes to the information provided or the format in which it is made available.

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 or potential breaches and the steps taken to remedy them.

The 2023 report has been delivered to the CMA, Ofcom, and the Adjudicator. Arqiva reported 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.

While it was just after the period covered by this report, in July Arqiva published an updated version of its Information Security Strategy. This can be found under the “Corporate” tab at <https://www.arqiva.com/documentation>.

Previous Adjudicators have audited 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 the Transmission Adjudicator glyn.jones@ota-bts.org.uk.