

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 October 2023 – 31 December 2023

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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 October 2023 to 31 December 2023. 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

Ofcom have appointed Glyn Jones as the new Adjudicator for Broadcast Transmission Services. Jon Butler will step down from the Adjudicator role on 29th February 2024 with Glyn commencing on 1st March 2024. Between late January 2024 and the 1st March 2024 there will be a handover process from Jon to Glyn.

Megan Donald continues in her role as Executive Assistant and Office Manager, also on a part time basis.

Legal advice is provided by Mr Richard Pull of Goodman Derrick LLP.

The Adjudicator has vacated the Ofcom offices at Riverside House, but Megan remains based there.

Website: www.ota-bts.org.uk

Adjudicator - current jon.butler@ota-bts.org.uk

This email will cease on 29th February 2024

Adjudicator - from 1st March 2024 glyn.jones@ota-bts.org.uk

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

2.2 Budget

Expenditure 1 April 2023 to 31 December 2023 was £403,600 against an annual budget (1 April-31 March) of £497,188. A contingency of £470,000 is available if needed.

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.

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>

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

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 2022 to 30 June 2023.

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

Look under the “regulatory” tab.

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 2023 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 (ISS) 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:

<https://www.arqiva.com/documentation>

Look under the “corporate” tab.

The Adjudicator audits the Information Security Strategy from time to time. The first audit was in 2011 and the most recent in 2022.

Following the divestment of the telecoms business and subsequent reorganisation, the Adjudicator has undertaken an audit to ensure that the requirements of the ISS are met within the new structure. This audit commenced in Q4 2021 and was completed at the end of March 2022. The audit showed that Arqiva have satisfactorily met the requirements of the Undertakings and demonstrated continued compliance with the ISS. The full audit report is at appendix A to the June 2022 report.

Future audit activity will be considered by the new Adjudicator.

5.5 Local Commercial DAB Agreements Regulatory Charges Approach

Following the expansion of the coverage of local commercial radio multiplex services around 2015 under the Framework Agreement on Local DAB Expansion¹, many of the agreements for transmission services provided by Arqiva with local commercial radio multiplex licensees for both the additional expansion services added then, and the earlier so called “launch” services, were combined into one agreement for particular local commercial radio multiplex licences. Under the terms agreed with the licensee these agreements are in place until the end of the licence in 2030.

This was not the case for all licences, and in some cases, they maintained two separate agreements: one for the launch services and one for the services from those expansion sites added around 2015. Due to the end of the term of the agreements for some of the original launch sites being earlier than 2030, a few of these agreements have needed renewal. Arqiva has provided notice of renewal options to these licensees and has provided updated regulated service charges.

In our previous report we noted that the Adjudicator asked to be taken through the approach for the regulatory service charges necessary to be included for the transmission services provision for these launch sites by Arqiva. Arqiva provided the Adjudicator with the basis of the regulatory charges for Network Access and for Managed Transmission Services. This included any necessary re-engineering requirements and the approach to subsequent updates to transmitter electrical performance for power efficiency and the related pass-through electricity charges.

This activity was not undertaken as a formal audit, the Adjudicator reviewed the approach taken by Arqiva and had no further questions at this time.

In the period of this report, more contract renewals have been undertaken by Arqiva and details communicated to the Adjudicator.

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.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/393701/Local_DAB_Framework_Agreement_-_FINAL_VERSION_SIGNED_19_12_14_1_.pdf

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://www.ota-bts.org.uk/guidance.html>

6.2 Audits

Arqiva use a database system to store site infrastructure records. The database records a variety of site data which includes information relating to the height, type and location of antenna systems. Information within the database is used to determine the loading which the antenna system places upon the site mast or tower. This loading (windloading) is used to calculate the site apportionment for the charges to the users of the antenna systems.

The Adjudicator has undertaken five audits of Arqiva's site infrastructure records, the first in 2016 and the most recent was published in Q3 2020. These audits compared Arqiva's site infrastructure records to what was observed on the structure by the Adjudicator during site visits.

In 2021 Arqiva replaced the KEEP site records system with a new database system from Siterra. The Adjudicator commenced an audit of the new system in Q4 2021 which was completed in March 2022. The first stage of this audit was to review Arqiva's transfer process from the old to the new system and the steps Arqiva followed to ensure integrity of the windloading and site apportionment calculations. The second stage was to undertake a detailed review and comparison of the windloading and apportionment calculations from four sample sites using historic data from KEEP and current data from Siterra. The Adjudicator's calculations were compared to Arqiva's calculations and any changes to the install base (in between data snapshot dates) were reviewed and taken into account.

For stage one, Arqiva provided satisfactory evidence of a robust data transfer and checking methodology in the migration from KEEP to Siterra. For stage two, the Adjudicator's calculations of windloading and site apportionment were identical (to 6 significant numbers) between KEEP and Siterra, and to those provided by Arqiva. The full audit report of these findings is at appendix B to the June 2022 report.

The Adjudicator and Arqiva discussed Siterra development progress and future audit scoping work in late 2023. Any further audit work will be considered by the new Adjudicator.