



12/2/2025

D34 Response to Consultation 1/2025: Operating Budget for The Office of the Adjudicator - Broadcast Transmission Services

D34 would like to thank the Adjudicator for the opportunity to comment on the Operating Budget for 25/26.

D34 understands the role of the Adjudicator as being one that has multiple facets which include resolving Disputes; reviewing how the market and Arqiva are behaving; promoting transparency of information and issuing guidance.

Whilst it appears that there have been few historical Disputes raised to the Adjudicator in the past there is clearly a need for a programme of continuous reviews and consultations on issues that impact broadcast transmission customers, with guidance being issued to address the findings of such reviews.

D34 believes that reviews of key market measures such as WACC and inflation are essential and should be undertaken on a more regular basis than they have been in the past. It would appear that the reviews of such measures in the Broadcast Transmission Services space have taken place once every 10-20 years. This is certainly a very long period compared to other regulated markets where such reviews typically take place every 3-7 years, depending upon the market.

The WACC was first set in 2006 by Ofcom at 7.71% (pre-tax real). The OTA-BTS undertook a consultation on the WACC in 2015 at which point the WACC for new investment/reference offers was set at 7.5% (pre-tax real). These WACC's remain in force today and have not been reviewed since 2015. The Adjudicator indicated at the time that he felt the WACC would remain in place for 10 years, despite the evidence that other regulators undertook more regular reviews. In addition the stance of many UK regulators on WACC have developed over the last 10-15 years. It is therefore appropriate for the Adjudicator to review the WACC once again in 2025 and this should be given a high priority given the lack of review of the WACC since 2015.

An inflation allowance of RPI-1 was included in the Undertakings, which were adopted in 2009, for new Reference Offers. This was acknowledged and accepted by the OTA-BTS in consultation 3/2009 as part of the OTA-BTS obligation to issue guidance. As far as D34 is aware this inflation allowance has not been reviewed since by the OTA-BTS. This is despite the ONS calling on the Government multiple times (starting in 2012) to stop using RPI as an

inflation index due to RPI systematically overstating inflation in the UK economy¹ and the Government accepting their recommendation in 2020.

Arqiva itself has stated that “the Group’s broadcast transmission services contracts are based on Retail Price Index (“RPI”) measures, which may not accurately reflect the drivers of the Group’s cost base over time”². This has been plainly evident over the last 3 years following the spike in electricity prices caused by the war in Ukraine which drove up the cost of gas/oil. Despite the majority of Arqiva’s customers paying the electricity costs directly, Arqiva has applied RPI linked increases to regulated fees. As a large proportion of the high inflation increases were purely due to energy/fuel cost increases, this has moved Arqiva’s pricing away from being cost oriented, as also required by the Adjudicators guidance on pricing, and Arqiva is thereby benefitting from a significant windfall which will continue to compound through contract lifetimes. D34 believes it is essential that the OTA-BTS reviews the inflation measures as a matter of priority in 2025 in order to assess whether such measures are appropriate and whether any redress should be applied for the historical over-recovery.

D34 would also welcome a review of Arqiva’s processes for calculating prices for NA and MTS. Such a review should examine whether the asset valuation methodology is appropriate given the high returns that Arqiva are making from its assets and promote pricing transparency to its customers so they can understand how prices are derived and assess whether they are fair.

To answer the questions specifically raised in the consultation

Question 1 - Do you consider the proposed budget is adequate to allow The Adjudicator to fulfil his functions as set out in The Undertakings?

We believe that the Adjudicator should have adequate funding in order to undertake the work required to perform his duties. There appears to have been a hiatus in undertaking reviews at the OTA-BTS in recent years with the last consultation (apart from to set the annual budget) occurring in 2015. It is therefore essential that a number of these issues are addressed as a matter of urgency to bring matters up to date with best practices.

We set out our preference on priorities for work in 2025/6 below in Qn 2. With this in mind we believe the amount set in the budget for external advice of £204k may be on the low side to undertake the priority issues we have raised. We would prefer to see that part of the budget increase rather than postponing issues to be reviewed to subsequent years in order to manage the budget.

Question 2 – In Appendix 1, the five bullet points under the heading ‘Additional Activities’ set out reviews some stakeholders have said they believe are needed and areas where new guidance should be issued. It is not an exhaustive list. What ‘Additional Activities’ do you believe should be prioritised by OTA-BTS in the year covered by this budget and why?

¹ <https://ukrn.org.uk/app/uploads/2018/06/UKRN-2018-Inflation-paper.pdf>

² https://www.rns-pdf.londonstockexchange.com/rns/0295D_1-2023-6-16.pdf

As explained more fully above we believe the following items should be prioritised in 2025:

- 1) A review of the WACC
- 2) A review of the inflation mechanism
- 3) A review of Arqiva's processes for calculating prices for NA and MTS