

Office of the Adjudicator – Broadcast Transmission Services

Report for the period:

1 January 2025 – 31 March 2025

An explanation of the background to the Undertakings, the Office of the Adjudicator Broadcast Transmission Services (OTA-BTS) and the role of Transmission Adjudicator can be found in the Appendix to this report.

1 Key Events in the Quarter & Stakeholder Meetings

1.1 Regulatory Accounts Consultation

Ten submissions were received to the consultation which ran from 17 December 2024 to 11 February 2025. The Adjudicator is grateful to everyone who provided input. A summary of all 10 responses and copies of the public submissions can be found at <https://ota-bts.org.uk/consultations/> under the tab for 2024.

The Adjudicator made six conclusions which will be the basis for the next steps.

- 1) The requirement for Arqiva to produce Regulatory Accounts should be retained.
- 2) Given the case made by Arqiva and other stakeholders that the current format of the Regulatory Accounts is useful, care should be taken not to undermine this in making any changes. Similarly, where possible, key indicators should be retained and produced using the current methodology to aid year-on-year comparisons that stakeholders find useful.
- 3) Different submissions made a broad range of suggestions for adding more detail and increasing transparency. Some suggested adding new elements such as future forecasts. The Transmission Adjudicator will, in the short term, ask Arqiva to comment on the changes suggested in this consultation to inform the steps outlined below. It is hoped that Arqiva's additional document can be published with minimum redactions.
- 4) The Transmission Adjudicator agrees with stakeholders who regard regulatory accounting as a specialist area and plans to work with an external specialist from an economic advisory firm to develop an updated format for the Regulatory Accounts. The external specialist will have access to the consultation submissions and will have follow up discussions with stakeholders.
- 5) Once the updated format is developed, the Transmission Adjudicator will work with Arqiva to decide how best to implement the changes. Whilst some stakeholders felt any additional cost was a proper consequence of the Undertakings, the Transmission Adjudicator regards it as important that the regulatory burden on Arqiva should be proportionate.

- 6) Arqiva's current financial year runs from 1 July 2024 to 30 June 2025, and the Regulatory Accounts for the year will be published in October 2025. Given the lead time and the work involved, it is unlikely a new format can be fully adopted for the set of accounts that will be published this autumn. However, the Transmission Adjudicator will discuss with Arqiva the publication, either at the same time or shortly after the accounts are published, of a commentary or a set of answers to stakeholder questions.

Following the consultation, the Adjudicator has started discussions with Arqiva, as per Conclusion 3, about the format and content of its further submission. In parallel, the Adjudicator will draft a proposal for a piece of work by external consultants to make recommendations about changes to the Regulatory Accounts. It is likely that the external consultants who are appointed will want to have discussions with some of those who made a submission to the consultation. Any stakeholder who believes it would be useful for them to be included in that process should email the Adjudicator at glyn.jones@ota-bts.org.uk.

As highlighted in the conclusions, while some changes may be introduced during the current cycle, others will take longer to implement.

1.2 Workplan for 2025/2026

As part of the consultation on the budget for the year from 1 April 2025 to 31 March 2026 (see 1.3, below), stakeholders were invited to comment on their priorities for the Adjudicator's workplan.

A non-prescriptive list of possibilities was included in the consultation document.

- A review of the inflationary mechanism
- A review of the Weighted Average Cost of Capital (WACC)
- A review of Arqiva's processes for calculating prices for NA and MTS
- Guidance on elements of the Undertakings which are not well understood by stakeholders
- Assessment of Arqiva's Information Security Strategy

A summary of responses to the consultation and the submission by D34 have been published at <https://ota-bts.org.uk/consultations/> under the tab for 2025. The Adjudicator has also taken into account the Undertakings and views expressed by a broader group of stakeholders during meetings over the past year.

The Adjudicator's conclusion is that the first priority should be to review Arqiva's processes for calculating prices for NA and MTS. While Arqiva has expressed confidence that its processes comply properly with the Undertakings and current

Guidance, a cross section of stakeholders have expressed a desire for the Adjudicator to provide independent confirmation. In the Undertakings Arqiva agreed to provide the Adjudicator with access to any relevant information that is requested to a high degree of granularity.

Some of the consultation responses the Adjudicator received highlighted the importance of the other activities detailed in the list of potential priorities. Some argued that several items were interrelated and should be carried out as part of one bigger project. The Adjudicator recognises the merit in these arguments and agrees that all of the pieces of work, and some others, need to be carried out. However, the limitations of both the budget and Adjudicator's small team, mean it is not possible to take on all the work in a single year.

Alongside the continuing process to make changes to the Regulatory Accounts and the priority task of reviewing Arqiva's processes for calculating prices for NA and MTS, the Adjudicator will assess during the year whether work can start of the other significant projects.

1.3 Budget for 2025/2026

While the Adjudicator is independent of Ofcom, the Undertakings give Ofcom the responsibility for setting the annual budget for OTA-BTS. In the run up to setting the budget for 1 April 2025 to 31 March 2026 Ofcom considered inputs from the Adjudicator and stakeholders. The process included a consultation which ran from 20 January to 14 February 2025.

The consultation paper and details of the budget set by Ofcom are published at <https://ota-bts.org.uk/consultations/> under the tab for 2025.

1.4 Meetings with Stakeholders

During this period the Transmission Adjudicator, Glyn Jones, and his team (see paragraph 1.6) held meetings either face-to-face or via video conference using Teams with:

Arqiva	BBC	Comux
Communicorp	CMA	Ofcom

In addition, the Adjudicator's team proactively made contact with other companies during the consultation about the Regulatory Accounts.

1.5 Network Access Charges

The report for April to June 2024 explained that the DTT multiplex licensee D3&4 had submitted to the Adjudicator a 56-page report on network access charges which it had commissioned from an external firm of policy and regulatory

consultants. In this quarter, the Adjudicator continued to consider the report within the framework of the Undertakings.

Confidential information redacted

1.6 The Adjudicator's Team

Glyn Jones has been Transmission Adjudicator since 1 March 2024. Megan Donald is the Executive Assistant and Office Manager. Jeff Astle works with the Adjudicator on consultations and other projects. All three work part time.

In addition, Alice Wallace-Wright of Hogan Lovells International LLP provides legal advice. Professor Geoffrey Myers provides as hoc advice on economics and regulation.

During this quarter, Simon Mason joined the Adjudicator's team. In the first part of his career, he was employed by Marconi and the BBC. Until three years ago he worked for Arqiva. The work Simon will be doing is described in the next section.

Megan Donald is based at Ofcom's offices at Riverside House. The rest of Adjudicator's team have access to desks and meeting rooms in Ofcom's building when needed.

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

1.7 Simon Mason

Paragraph 13.5 of the Undertakings states that Arqiva must provide such information to the Adjudicator as they consider is required for the proper discharge of their functions. Those functions include promoting transparency in relation to information on pricing and costs where the Adjudicator considers this in the interests of the industry (Appendix 1 of the Undertakings).

Pursuant to these provisions in the Undertakings, the Adjudicator has asked that Arqiva restart the historic practice (paused by a previous Adjudicator) of sharing offers for Broadcast Transmission Services and the exchanges with customers in follow-up discussions once an offer has been made so he can better understand Arqiva's compliance with the Undertakings.

Simon Mason (a consultant engaged by the Adjudicator) will be reviewing the documents Arqiva provides. If he thinks there may be technical or costing issues

that need further clarification, he will draw those points to the attention of the Adjudicator who will decide whether to raise them with Arqiva.

Arqiva is required to supply this information in line with its obligations under the Undertakings, but Arqiva has made sure that the Adjudicator and their team have appropriate confidentiality arrangements in place to ensure the information about any customer is kept confidential.

2 2024/25 Budget

In terms of the current financial year, expenditure from 1 April 2023 to 31 March 2025 (i.e. the full financial year) was £564,200 against an annual budget of £698,402. In addition, a contingency of £470,000 was available but was not required.

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 www.ota-bts.org.uk.

3.4 Publication of Reference Offers.

In July 2024 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

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

3.5 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.

3.6 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.

3.7 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.

In July 2024, Arqiva published an updated version of its Information Security Strategy. This can be found under the “Corporate” tab at <https://www.arqiva.com/documentation>.

3.8 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 report for the period from 1 October 2023 to 31 December 2023 on the www.ota-bts.org.uk website.

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 www.ota-bts.org.uk.

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.

Appendix A - 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, appointing Adjudicators and in some circumstances terminating their contracts).

Finally, alongside the Adjudicator, overarching responsibility for compliance with the Undertakings sits with the Competition and Markets Authority.