

Office of the Adjudicator – Broadcast Transmission Services

Report for the period 1 April – 30 June 2012

Contents:

- 1. Background**
- 2. Office of the Adjudicator**
- 3. Disputes and guidance**
- 4. Publication of reference offers**
- 5. Reporting and audit**
- 6. Planned future activity**

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.

[\[http://www.competition-commission.org.uk/inquiries/ref2007/macquarie/pdf/notice_undertakings.pdf\]](http://www.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, 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 April to 30 June 2012. This report will be published on the website of the Adjudicator (www.adjudicator-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 on a 3 day/week basis, Jon Trowsdale as Deputy on 2 day/week basis. Megan Swalwell is Executive Assistant and Office Manager on a part time basis.

Legal advice is provided by Mr Paul Herbert of Goodman Derrick LLP.

Office facilities and IT support are provided by Ofcom.

2.2 Budget

The budget for 2011/12 was set, following consultation, at £532,926 for operations and £470,000 for contingency (this includes the increase in VAT to which most of the budget is subject and compares with £529,188 for operations in 2010/11).

The financial year ended on 31 March. The expenditure for the year is £391,074 within budget and there has been no recourse to contingency. The under-spend is primarily due to the budget for external legal and professional fees, which represent discretionary spend, not being fully used.

The budget for 2012/13 has been set, following consultation, at £532,162 for operations and £470,000 for contingency.

2.3 Stakeholder Meetings

During this period regular meetings with stakeholders have continued and include government departments, television broadcasters and radio broadcasters, both large and small:

Confidential information redacted

The Competition Commission are undertaking a piece of work to examine the effectiveness of “Undertakings” as a remedy. The Adjudicator has contributed to this review and the CC has contacted a selection of broadcasters to seek their views. The report is due to be published August 2012.

2.4 Arqiva

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.

Confidential information redacted

3 Disputes and Guidance

3.1 Guidance

No further guidance has been published during this period.

3.2 Disputes

In this period there have been no disputes requiring the use of the formal dispute procedure.

4 Publication of Reference Offers

Arqiva reference offers can be found at:

<http://www.arqiva.com/corporate/documentation/referenceoffers>

Following guidance from the Adjudicator, Arqiva have published the Network Access Rate Card.

http://www.arqiva.com/corporate/pdf/ReferenceOffers/NA_Rate_Card_2010-11_publication_version.pdf

5 Reporting and Audit

5.1 Reporting on Digital Switchover Progress

Under Paragraph 17 of the Undertakings, Arqiva is obliged to provide a monthly report on DSO progress. The reports are being received monthly.

5.2 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 accounts covering the period 1 July 2010 to 30 June 2011 are available on Arqiva's website:

<http://www.arqiva.com/corporate/documentation/regulatory/>

5.3 DSO Audit

The DSO audit for the period 1 July 2011 until 30 June 2012 has commenced. During this period there has also been an audit of the corporate overhead charge which forms part of the DSO spend. These reports are shared with the BBC, SDN and D3&4 but are not published.

5.4 Compliance Report

Paragraph 18.1 of the Undertakings requires Arqiva to deliver an annual report to the Office of Fair Trading setting out steps taken to comply with the Undertakings and details of any breaches and including steps taken to remedy them.

The next is due at the end of November 2012.

5.5 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.

5.6 Information Security Strategy

Paragraph 16.2 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 Adjudicator commissioned an independent audit of the strategy and the final audit report was published during May 2011.

<http://www.adjudicator-bts.org.uk/documents/AuditArqivaInformationSecurityStrategyMarch2011.pdf>

The BBC tender process, referred to below in Paragraph 6.4, has brought the need for separation between NA and MTS within radio into focus and Arqiva have developed procedures under the ISS to address this. The Adjudicator has commissioned an audit of these arrangements which will take place at the end of August 2012.

5.7 DAB MOU

The Adjudicator is a signatory to the MOU for funding of radio switchover as the Office of the Adjudicator has an overseeing role in this process. The full text of the MOU is at:

<http://www.culture.gov.uk/publications/9197.aspx>

6 Planned future activity

6.1 Guidance

The Adjudicator has now 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 at a later date if necessary.

The work on Network Access cost recovery referred to below may result in guidance being issued on cost re-allocation following major changes to site use.

6.2 Radio Network Access project

This project was to look at the impact of NA charges arising from the changed utilisation of the transmitter sites from:

- TV DSO
- 600Mhz development
- DAB expansion
- Analogue radio switch-off.

As time goes on the timing and extent of each of the above becomes more uncertain so the work was done against a number of scenarios. The impact on any particular user will depend upon the type of contract they are on; older ones permit rent and rates to be re-assessed each year but other elements are fixed, whilst in newer ones the charges vary according to the number of users on site as well as pass through charges (rent, rates and electricity).

The broad conclusions were:

- There should be no impact on radio charges as a result of TV DSO or reuse of the 600Mhz band as existing contracts largely take these developments into account.
- DAB expansion will give rise to an overall increase in rent and rates costs to Arqiva, but the increase will be attributable to the stations that benefit from expanded coverage. There will be an increase in fixed costs to deliver the new sites and an

increase in depreciation charges against the capital expenditure to deliver the new stations.

- Switching of FM should cause a fall in overall rent and rates costs to Arqiva and a reduction in Arqiva's operating costs. Depreciation will stay at the level it rose to as a result of DAB build out and will largely offset the cost savings taking the total NA for radio back to the level it was at pre DSO build out.

One of the questions that this work sought to answer was "would switching off FM result in significant unallocated costs having to be redistributed?" It would appear that switching off FM result in some common costs shared between FM and existing DAB services being re-distributed but the overall impact is not significant and would be absorbed by the new DAB transmitter sites.

The Adjudicator intends to publish more detail on the above in the next report. The work was done against scenarios and it may be that the work will need revisiting when there is more clarity on timescales for switch-off and options for spectrum usage.

6.3 DSO "true –up"

As DSO nears its end, there is a need to reconcile the actual costs with the original reference offers and ensure that the split of cost between Arqiva and the multiplex operators is according to the agreed process. The work is mainly between the multiplex operators and Arqiva but the Adjudicator may have a role to play in this process.

6.4 BBC procurement.

The BBC have started a procurement exercise for their radio transmission contracts, which expire in October 2013. Arqiva are both a bidder and a provider of NA and, as such, will need to provide quotations for NA to other bidders. The Adjudicator is working closely with the BBC and Arqiva to ensure that the requirements of Information Security and Network Access offers as set out in the Undertakings are complied with.