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Ofcom
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Dear Yih-Choung,

As discussed and subsequent to our submission to you of 7 June 2016, we are providing you with further background information to assist with your Broadcast Transmission Services Review consultation.

Arqiva seeks to provide a cost-effective managed transmission service (MTS) and network access (NA) service to our customers. As background to this, our MTS reference prices are subject to commercial agreement and our NA returns are regulated by the Office of the Adjudicator – Broadcasting Transmission Services (OTA). Arqiva must offer customers the opportunity to procure MTS independently of NA.

Many of our contracts were put into place before the 2008 merger of Arqiva and NGW, following competitive tendering. The values of these contracts are generally subject to RPI-x indexing arrangements and they also received discounts as a result of the approval of the merger which ranged from 3% (for TV) to 17% (for radio). Completely new services are contracted through reference offers which are cost-orientated at a return set by the adjudicator and also have RPI-x provisions. At contract renewal customers have the right to choose to (1) renew on existing terms; or (2) move to a new reference offer arrangement; or (3) purchase equipment exclusively used for that customer and enter into an MTS agreement with a new provider. In the main we find that most customers choose to renew on the basis of whichever the cheaper option is between (1) and (2) and therefore overall the trend for renewals is declining prices.

As a result of these contracting arrangements and renewal choices, Arqiva has a strong existing financial incentive to reduce our costs in order to maintain the profitability of all contracts in an environment where our prices are falling in real terms.

The value of the NA costs may vary over time depending on changes to the infrastructure by all of Arqiva's customers and the value and allocation of the NA costs are reviewed and audited by the OTA. As new services launch, the majority of existing customers who share the same common infrastructure and who themselves are contracted through reference offers will benefit from a reduced fee as a result of the infrastructure being used by more sharers. This supersedes the SMP framework as it is written into the 2008 undertakings. This again is fully monitored and regulated by the OTA, who audits us on a regular basis and who we are required to provide information on our costs (via annual audited Regulatory Accounts) to ensure that we are complying with the terms of our undertakings.

A number of customers benefit from significant levels of transparency on the specific details of their contracts. We meet with customers from time to time to discuss details of their contracts. This includes discussing how those contracts operate in the context of the existing regulatory framework.

On more specific issues relating to our NA costs, the OTA can provide information to customers who seek greater clarity on that area of their contracts with us.

Additionally, Ofcom may wish to note the findings of the BBC Trust's report *The BBC's distribution arrangements for its UK Public Services* from November 2013. In that report the Trust endorsed the findings of the consultants Mediatique, who had been commissioned to review the BBC's existing distribution agreements. Amongst those conclusions was:

The BBC's current expenditure on traditional distribution is either in line with that of its direct commercial cohort or, where higher, is justifiably so when adjusted for a range of specific contractual terms.¹

Finally, we re-iterate our view that our customers have a significant level of regulatory protection under the current framework, and that this would be retained in the event that our significant market power (SMP) obligations are removed. The obligations have been captured and, in some areas, strengthened by the undertakings which were approved by the Competition Commission following the Arqiva-NGW merger. In particular, we note that Ofcom would retain the option of initiating a market review process in the future where evidence emerges that this market was no longer functioning well. However, we believe no such evidence appears to have been provided in response to this consultation and we are not aware of any formal complaints regarding Arqiva being raised by a customer with the OTA since it took responsibility for determining disputes in 2009.

I hope the above is of use to you. Please do not hesitate to contact me if you have any further queries.

Yours sincerely



John Canavan

¹ *The BBC's distribution arrangements for its UK Public Services: A report by Mediatique presented to the BBC Trust Finance Committee, November 2013. See paragraph 1.11*