



Arqiva submission to Ofcom's *Broadcasting Transmission Services: a review of the market*

About Arqiva

Arqiva is a communications infrastructure and media services company, operating at the heart of the broadcast and mobile communications industry. Arqiva provides much of the infrastructure behind television, radio, mobile and other wireless communications in the UK and we are at the forefront of network solutions and services in an increasingly digital world.

The company supports cellular, wireless broadband, video, voice and data solutions for public and private sector customers.

In the TV space, Arqiva is a founder member and shareholder of Freeview, Youview and Digital UK. Freeview is the largest TV platform in the UK delivering over 60 digital TV channels, including 15 HD channels, and 24 radio stations free to the UK public. Arqiva owns and operates the networks for all of the Freeview multiplex licence holders and is the licence holder for four of the DTT multiplexes, including the two interim HD multiplexes – Com 7 and 8 – the lifespan of which is addressed in the consultation document. Our networks cover 98.5% of UK households with the public service channels, around 90% of households with commercial national services and 76% for the services on the interim HD multiplexes.

Our major customers include the BBC, ITV, Channel 4, Five, BSkyB, UKTV, Sony, AMC, Ideal World, QVC, Russia Today, Al Jazeera Networks, Global Radio, Bauer Media, BT and the four UK mobile operators.

Arqiva is owned by a consortium of infrastructure investors and has its headquarters in Hampshire, with major UK offices in London, Buckinghamshire and Yorkshire and operational centres in Greater Manchester, West Midlands and Scotland.

Summary

Arqiva welcomes the opportunity to respond to Ofcom's consultation *Broadcasting Transmission Services: a review of the market*, published on 31 March 2016. As the owner and operator of the networks within the markets under discussion, we have a clear interest in the proposals set out by Ofcom.

We fully support the proposed approach taken by Ofcom in this consultation. In our view, the proposal to remove our 2005 significant market power obligations represents a pragmatic approach to a market that has evolved significantly over the last eight years. We consider the proposal to be primarily technical in nature as our specific commitments to our customers, enshrined in our 2008 merger undertakings, would be unaffected by this proposal.

More positively, however, we would expect the removal of any obligation to undertake burdensome market reviews (which may otherwise be the case in the future under the SMP regime) will give us the regulatory certainty to underpin future investments in the TV and radio platforms. This is of particular importance as we work to clear the 700 MHz band for mobile services in an orderly fashion and to an ambitious timetable, and on any future potential radio switchover programme.

In this submission we set out our own views on why the evidence supports Ofcom's view that we no longer have SMP and have no ability or incentive to foreclose access to the market; discriminate between customers and/or charge excessively high prices.

Overview

Our customers will continue to benefit from the 2008 merger undertakings

In 2008, the merger of Arqiva and NGW was cleared by the Competition Commission. At that time, we agreed a comprehensive set of undertakings to ensure that our monopoly position in the relevant markets would not lead to any significant harm to our customers. One of the consequences of those undertakings was that all of the significant market power (SMP) regulatory conditions imposed on Arqiva and NGW in 2005 were strengthened in a way that should lead to enhanced benefits to our customers.

The scope and substance of the 2008 undertakings were subject to rigorous scrutiny by the Competition Commission to ensure that market access to our infrastructure could be secured on fair and reasonable terms. The 2008 undertakings set out a suite of improved terms and conditions for existing contracts as well as detailed arrangements for new agreements under similarly fair and reasonable terms and conditions.

The 2008 undertakings also introduced a backstop measure to deal with any protracted disputes via an impartial adjudicator.

As a result of those strengthened obligations, we believe that our customers have seen an improved level of service and a credible pricing regime, broadly consistent with what would be available in a competitive market for network access and managed transmission services. Ofcom helpfully quotes the key findings of the July 2015 Competition and Markets Authority (CMA) review into our market¹ setting out the key elements of this improved service.

At its most fundamental level, therefore, the removal of our 2005 SMP obligations will not materially change the functioning of these markets. The strengthened 2008 undertakings will remain in place and we will continue to operate within a regime whereby any disputes are subject to an impartial resolution process.

The removal of our SMP obligations will reduce uncertainty

Since the SMP regulatory conditions were imposed on Arqiva/NGW in 2005 there has been no further comprehensive review of the relevant markets². This, we believe, was a pragmatic approach to the specific requirements of this market given the scrutiny surrounding the 2008 merger of the two organisations and the requirement to complete Digital Switchover (DSO) and clearance of the 800 MHz band between 2008 and 2013.

One of the key initiatives affecting mobile and broadcasting services - both in the UK and Europe - is the clearance of the 700 MHz band to enable new 5G services. We are working closely with Government, Ofcom, relevant broadcasters and industry to execute this to an ambitious timetable. Our challenge is to ensure that clearance can take place as quickly as possible and with the minimal impact on TV viewers.

¹ Paragraph 5.15

² As defined by the relevant EC Directives

We consider that the removal of this additional layer of regulation will promote regulatory certainty for the platform. This is particularly important as we consider future options for investment. For example, we may wish to consider how best to move the platform toward a future where DVB-T2 plays an increasing role in terrestrial content delivery.

We note that in the context of the relevant markets in *this* case, Ofcom reserves its right to undertake a market review “should the restrictions imposed on Arqiva by the Undertakings change”. We consider this approach to be balanced and proportionate.

Accordingly, we consider that Ofcom's proposal to remove those 2005 SMP obligations will reduce regulatory uncertainty, be to the long term benefit of our TV and radio customers, and ultimately promote the interests of the wider UK television sector.

These markets are already subject to significant levels of scrutiny

Although Ofcom's proposals would remove the requirement for formal three-yearly market reviews, it conspicuously does not mean that this market will be free from rigorous ongoing scrutiny. This should provide comfort to our customers that the high levels of service that we provide will continue in the future and will be subject to regulatory oversight. In particular:

- We are subject to ongoing monitoring by the adjudicator who we meet on a monthly basis. Those meetings look at details of our engagement with our customers as well as ensuring that we are complying with our specific auditing and budgetary obligations;
- We must, as part of our 2008 undertakings, provide an annual report to the adjudicator setting out how we have complied with our obligations and whether there has been any actual or potential breach;
- Individual cases where we fail to reach an agreement with existing or new customers are subject to the binding judgement of the adjudicator;
- Individual elements of the market continue to be subject to consultation where it is deemed to be necessary. This was the case where the adjudicator published a consultation in 2015, *The Cost of Capital in Relation to Broadcast Transmission*³; and
- As stated above, Ofcom has signalled that there is always the option of initiating a market review of these markets at any point in the future where our undertakings change.

This scrutiny supports Ofcom's view that we are unable to act in a way that signifies SMP. In particular, whilst we take any concerns raised by the customers with the adjudicator seriously, we would respectfully argue that no issues of major significance have been raised since the 2008 undertakings were put in place.

³ http://adjudicator-bts.org.uk/documents/Consultation_2_2015.pdf

Indeed, since the 2008 undertakings were put in place, a hugely successful DSO programme was completed. We worked - with our customers - within the context and framework of those undertakings to successfully secure the most ambitious communications infrastructure project in the UK. We successfully upgraded the 1154 site UK television network in all 15 Television regions in the UK between 2007 and 2012, including having London switched over in time for the 2012 Olympics. Similarly we have managed to successfully extend DAB radio coverage to levels where Government may be able to credibly consider a full switchover in due course. All of these achievements have been secured within the framework put into place in 2008 and underpinned by hugely constructive engagement with our customers.

Meanwhile, and as noted by Ofcom, the market has already been reviewed on an informal but relatively comprehensive basis by the CMA in 2015. The findings of this report specifically took into account the views of our customers and the broadly positive findings are consistent with our not having the ability to distort to market to the detriment of our customers.

Market concerns are most effectively dealt with under the existing 2008 undertakings

We set out above our agreement with Ofcom that our 2008 undertakings have secured the interests of our customers. In particular, we note that no issues of major concern have been raised within the adjudication process. However, we recognise that the nature of this consultation *may* encourage some additional issues of concern to be raised by other players in this market.

We look forward to discussing any such comments constructively should they arise. Given the rigorous and comprehensive nature of the 2008 undertakings and the existence of an impartial adjudicator, we believe that there is a highly effective mechanism to resolve any concerns – either in response to this consultation or where they arise in the future.

Responses to questions

Q1. Do you agree with our assessment of the relevant markets? If not please set out the basis for your disagreement.

We agree with Ofcom's assessment of the relevant markets

Q2. Do you agree with our assessment that the DTT and radio NA markets are suitable for ex ante regulation on the basis of our assessment of the three criteria test? If not, please set out the basis for your disagreement.

We agree that these markets are suitable for ex ante regulation.

Q3. Do you agree with our proposal that no operator holds SMP in the DTT NA market or the radio NA market, as result of the Arqiva/NGW Undertakings? If not, please explain why.

For the reasons set out in the previous section, we agree with Ofcom's proposal.