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8<sup>th</sup> June 2016

Dear Steve

**Digital 3 and 4 Limited response to Ofcom Broadcast Transmission Services consultation**

I am responding on behalf of Digital 3 and 4 Limited (D3&4) to your recent consultation "Broadcast Transmission Services (BTS): a Review of the Market".

D3&4 is a joint venture company set up by ITV and Channel 4 to hold their public service digital terrestrial television (DTT) multiplex licence and to meet its licence conditions which include the digital terrestrial transmission of the Channel 3 and Channel 4 Qualifying Services throughout the UK.

Arqiva is D3&4's sole contractor to transmit its licensed services according to the D3&4 multiplex licence conditions and so it has a particular interest in the outcome of Ofcom's review of the BTS market. D3&4 currently relies on the original SMP findings, their associated Conditions and the subsequent Competition Commission (CC) undertakings following Arqiva's acquisition of National Grid Wireless (NGW) in the management of its business with Arqiva and so the outcome of this review is of major importance to the ongoing management of its business.

D3&4 agrees with the main elements and conclusions of the consultation and is therefore content for Ofcom to remove the original Conditions which were imposed following the earlier BTS review and SMP findings. However, D3&4 wishes to note the importance it attaches to Ofcom's finding that Arqiva does not now have SMP only because of the effect of the CC (now Competition Market Authority – CMA) Undertakings.

D3&4 believes that Arqiva has an entirely dominant position in the BTS market. We agree with Ofcom's assessment that, given the high barriers to entry, it is unlikely that there will be any new entrants to the market in terms of the provision of network access for DTT, leaving Arqiva with an effective monopoly position for the foreseeable future. Given the requirement of public service broadcasters to make their PSB services available via DTT with the provision of coverage to at least 98.5%, there are no credible options to switch from the DTT platform. In terms of the Undertakings, D3&4 wishes to put on record its concern that any weakening of the Undertakings would have an adverse impact on this market and hence D3&4's business. D3&4 would expect that Ofcom would carry out a further market review before any such review of the Undertakings were concluded.

**Question 1:** Do you agree with our assessment of the relevant markets? If not please set out the basis for your disagreement.

Yes

**Question 2:** 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.

Yes

**Question 3:** Do you agree with our proposal that no operator holds SMP in the DTT NA market or the radio NA market, as a result of the Arqiva/NGW Undertakings? If not, please explain why.

Yes, but as noted above D3&4 remain concerned about Arqiva's dominant position in the market. Our view of the SMP finding is strictly conditional on the continuing application of the CMA Undertakings and hence any proposal to review these should trigger a further BTS market review.

Please do contact me if you have any questions about our response.

Yours sincerely



Greg Bensberg  
General Manager – Digital 3 and 4 Limited

Cc Digital 3 and 4 Limited Board  
Paul Herbert, Partner, Goodman Derrick LLP