

Competition in radio

Competition for contracts in radio

1. In this appendix we provide a discussion of the examples of competition or potential competition for MTS/NA contracts in relation to radio that have been provided to us by third parties and in relation to which the main parties have also submitted their comments.

Examples in relation to national radio

Virgin AM

2. From Virgin's submission, in relation to the contract for the Virgin AM station we understood that the presence of Arqiva had impacted on the terms of the contract that were finally agreed upon with NGW. In their exact words, Virgin submitted:

[REDACTED].

3. The parties, however, in their reply to the radio papers, submitted that Arqiva did not participate in the renewal of the Virgin AM contract in 2001. By contrast, the parties' understanding was that Virgin invited VT Communications to submit a proposal. This suggested to them that VT Communications was considered sufficiently credible to at least provide a benchmark for the services involved. [REDACTED]
4. In view of these two submissions, we do not consider that there is a disagreement of fact, merely a disagreement of interpretation. Virgin has not submitted that Arqiva had been invited to submit a bid for the entire MTS/NA contract, but rather for elements of the contract. This is in line with Arqiva's perception that it was invited to advise on technical elements of the service. It remains, importantly, that the presence

of Arqiva was undisputedly of value for the final outcome, particularly to aspects of quality of service.

5. In relation to the parties' contention that VTC had been considered a closer competitor to NGW than Arqiva for this particular contract, we do not find that Virgin's submissions suggest that. According to Virgin's statements in the hearing with the CC, it was felt that [REDACTED]. Accordingly, it made the decision that these services are to such a great extent core to its business that it would have been too great a risk to go out to a party who had never done this before.
6. The statement above clearly indicates that VTC was not actually considered a feasible alternative, independently of the terms of the contract that VTC might have submitted.

Classic FM

7. GCap Media submitted that since the privatization of BBC Transmission, the ability of its Classic FM radio station to exercise choice between two service providers irrespective of which masts are used¹ would provide GCap with valuable leverage in negotiations on price and service levels when drawing up MTS/NA contracts in the future.²
8. The parties contested this and instead submitted that there has been no competition, to the parties' knowledge, for the grant or renewal of the Classic FM contracts.
9. GCap Media further explained to us that while there has not, hitherto, been competition for the grant of the Classic FM transmission contracts, with expiry of the existing contract in 2012, GCap would be able to pitch Arqiva against NGW in a

process starting as early as 2010. This would be the first opportunity to do so because of the long-term contracts and due to the fact that this would be the first time in this contract renewal cycle that NGW would be considered to be a viable competitor.³

10. Thus, the ability to exercise choice between two service providers irrespective of which masts are used provides GCap with potentially valuable leverage in negotiations on price and service levels. This fact is independent of whether or not this opportunity existed in the past. We therefore understand GCap's concern that this competitive potential is lost as a result of the merger, particularly given the large size of the contract⁴ and the proximity of the date on which negotiations were expected to be initiated.

4 Digital

11. The parties' views in relation to the national multiplex 4 Digital are that Channel 4 did not conduct a formal tender process prior to the Ofcom licence application process, although it did issue a request for information to both Arqiva and NGW regarding the cost of constructing an 80-site network.
12. Nonetheless, Channel 4 told us that it pushed both parties during a competitive tender process which lasted about six months prior to appointing Arqiva as its bid partner. Channel 4 further noted that within that arrangement [REDACTED]. Following award of the licence, however, Channel 4 decided [REDACTED].
13. There is therefore a common position in relation to the fact that, since being awarded the licence, Channel 4 has negotiated exclusively with Arqiva. However, we consider

¹NGW's masts provide most of Classic FM's transmitter sites and Arqiva provides its managed transmission services.

²Source: GCap Media's submission to the OFT.

³Nearly all Classic FM's transmitters are located at NGW sites but the managed services contract is currently placed with Arqiva. [REDACTED].

⁴Classic FM transmits from 42 sites.

significant the fact that, prior to the award, Channel 4 had the choice between the two parties in terms of both financial and qualitative elements of the contract. In that regard, the parties' claim that in that period there was no 'formal tender process' is less important to assess. Whether formal or not, it appears that there was the ability for Channel 4 to choose between two potential providers and that both were interested and capable potential contractors.

The BBC

14. The BBC told us that the parties had competed vigorously in its DAB procurement procedure, as a result of which Arqiva had won the BBC contract to extend its DAB coverage (the phase 3 contract for up to [redacted] sites⁵) from NGW,⁶ which was the incumbent supplier for BBC DAB transmission services from its first [redacted] sites (the phase 1 [redacted] and phase 2 [redacted] contracts⁷)—the BBC submitted that it had received significant benefits from the effective competition between the parties.⁸
15. In respect of national FM radio broadcasting, the BBC submitted that [redacted] to the extent required to provide FM broadcasting transmission services to the BBC post-DSO.⁹
16. In relation to the BBC contracts, the parties explained that NGW provides MTS for all of the BBC's analogue radio services (ie local, regional and national AM and FM services) but that, in relation to the BBC's national DAB multiplex, NGW provides MTS on [redacted] of the transmission sites and Arqiva provides (or will provide) MTS on [redacted] additional transmission sites, with the obligation to provide MTS on a further [redacted]

⁵Source: parties' response to market and financial questionnaire, part C, paragraph 7.6, second bullet and Table C9.

⁶The parties, however, submitted that there has been no historical switching of national radio broadcasters between MTS providers to date (source: parties' main submission, paragraph 7.28 and parties' response to market and financial questionnaire, part C, paragraph 8.16).

⁷Source: parties' response to market and financial questionnaire, part C, paragraph 7.6, first bullet and table C9.

⁸Source: BBC submission to the OFT and response to OFT questions, and CC hearing with the BBC.

⁹Source: BBC submission to OFT.

sites should the BBC require such additional sites. The parties conclude that, contrary to the suggestion of the CC, this does not constitute an example of switching of services. NGW will continue to provide MTS in relation to [redacted] sites, whereas Arqiva will only provide MTS in relation to the new sites.

17. We believe that the BBC contracts are an important example of new competition arising with respect to an existing licence. In this case the BBC already had MTS/NA contracts for a number of its national DAB sites but, as it sought to extend coverage, it carried out an open procurement process which created an opportunity for real competition between the parties.

Examples in relation to sub-national radio

Kerrang! Radio

18. Kerrang! was awarded the West Midlands FM licence in October 2003. Emap told the CC that both Arqiva and NGW submitted proposals for inclusion in its Kerrang! radio station's application for the third West Midlands regional FM licence in October 2003 and that Arqiva initially proposed to use its own site at Lichfield, while NGW proposed to use the Radio Authority's suggested site at Sutton Coldfield (an NGW site). Subsequently, [redacted] but NGW won the contract [redacted].¹⁰
19. The parties have questioned Emap's recollection of the events apparently suggesting that Arqiva proposed the two alternatives simultaneously rather than in sequence. Arqiva, the parties state, considered that there were technical difficulties with using Sutton Coldfield due to the proximity of the new service's frequency to the existing services at Sutton Coldfield, and that these issues have in fact subsequently materialized.

¹⁰Source: Emap's submission to the CC.

20. We do not believe that the additional information provided by the parties in relation to this particular example contradicts the fact that different combinations of sites can be used and that different providers can base transmission solutions on these different combinations, possibly in different ways. Furthermore, this is an unquestioned example of competition between two parties offering the customer a real choice between alternatives.

City Talk FM in Liverpool

21. Emap submitted two examples¹¹ where the participation of the merging parties in a tender process contributed to drive down the price and/or ensure a better solution or an improvement in the levels of service to be provided.¹² The first of these was City Talk FM in Liverpool in 2007.
22. For City Talk FM, Emap recalls that NGW submitted a bid [X] a year lower than Arqiva's and that Emap awarded the contract to NGW in spite of Arqiva subsequently improving its bid on the basis of NGW's offer.
23. In their response to the radio working papers, the parties have denied that in this particular example Arqiva reduced its bid as a result of NGW's more competitive offer. Instead, the parties say that the Arqiva sales manager was not informed of the NGW offer but did become aware that Arqiva had access to some spare transmission equipment, which was owned by Emap and available to Arqiva as a result of Emap's decision to switch the Aire FM MTS contract to NGW. The fact that this equipment was available was drawn to the attention of the Arqiva sales manager after the initial cost quotation was provided to Emap for the City Talk project which allowed a revised offer to be put in. The parties further assert that this was a highly unusual

¹¹In addition to the example mentioned in paragraph 18.

¹²Source: Emap's submission to the CC.

situation as it is extremely rare for radio stations to switch MTS providers and for MTS providers to have such spare or 'second-hand' transmission equipment already owned by that customer.

24. We are not in a position to question the timing of this information being made available to Arqiva. However, if there had been only one bidder as opposed to two, it is unlikely that there would have been an incentive on Arqiva's part to prepare a second bid with a lower price.

Score Digital

25. The second example was in relation to Score Digital's¹³ regional DAB multiplex in Northern Ireland in May 2000. Emap's recollection is that competition between the parties reduced system costs by [X] per cent, improved technical quality, reduced RPI-lined price increases by [X] per cent and improved service guarantees by [X] per cent, among other improvements.^{14,15}
26. The parties, on the other hand, told us that while they were aware that Emap was seeking proposals from both parties, their recollection of the tender process was that the discussions were driven by changing requirements of the customer (rather than competition between Arqiva and NGW). In particular, the parties recalled that Arqiva offered certain contractual changes to Score Digital which had little cost to Arqiva and were considered to be beneficial to Arqiva in standardizing terms across a number of contracts with the customer group.
27. The parties appear to suggest quite a narrow interpretation of what constitutes competition. In our perspective, a situation where two parties adapt their offers to

¹³Part of Scottish Radio Holdings, itself part of Emap.

¹⁴In particular, additional monitoring systems were included in the contract and undertakings were provided to help develop lower-cost DAB products.

changing customer needs in order, presumably, to enhance their chances of winning the contract is indicative of competition. The extent to which offering the desired changes was costly for Arqiva is, in our view, a second order consideration.

Now Digital

28. GCap Media also provided two examples where it believed that competition between the parties to supply MTS/NA had driven down prices to its subsidiaries. The first was for Now Digital's local DAB multiplex covering parts of Hertfordshire, Bedfordshire and Buckinghamshire. GCap recalled that Arqiva submitted a bid of £[redacted] a year whereas NGW's bid was £[redacted] a year for almost exactly the same specification.
29. The parties have accepted that Arqiva and NGW each supplied indicative pricing information to GCap in relation to this multiplex but consider that this information was indicative and did not constitute an actual offer capable of acceptance by GCap. Furthermore, we were told that NGW's pricing was based on NGW's 'best guesses' and thus final charges can reasonably differ from initial indications. In addition, the parties submitted that the two indicative offers in effect differed in a number of respects.
30. The parties' expressed concerns with this example are threefold: (a) that it is not an example of prices being driven down by competition because final prices have not yet been agreed; (b) that, even if one of the parties seems to have offered lower prices, these may change once this party obtains more information about costs; and (c) that the difference in prices was, to a large extent, due to the services offered by the two parties differing in a number of respects.

¹⁵Source: Emap submission to the CC.

31. We do not attach particular significance to whether the two indicative prices put forward by the parties differ greatly. We also do not consider significant that final conditions for the contract have not yet been agreed.
32. We do, instead, consider significant that GCap was able to choose between two indicative offers and that competition has driven the parties to actively investigate alternative transmission plans in order to reduce the final cost to GCap. Competition has proved effective in bringing forward alternative ways to provide the services and appears likely to result in the choice of a substantially cheaper alternative.

XFM South Wales

33. The second example was about the contract for XFM South Wales in relation to which Arqiva submitted a bid of £[~~8~~] a year and NGW submitted a bid of £[~~8~~] a year.
34. The parties have not disputed this but told us that the bids differed in terms of the sites proposed. Arqiva suggested that GCap used St Hilary rather than Wenvoe because Wenvoe, as part of the DSO process could be subject to extended periods of service disruption associated with the construction of the new high power DTT network at the site. The contract was awarded by GCap to NGW (which offered services at the Wenvoe site) and one of the reasons given by GCap was that Arqiva's choice of transmission site was inferior. The parties submitted that this was evidence that these two sites were not considered substitutes by broadcasters.
35. We note that the parties have not disputed the fact that there was competition for this particular contract nor that there were differences in the prices and site solutions proposed. This is therefore a clear example where having two alternative providers of MTS/NA offered broadcasters a real choice. In the example, if only Arqiva had been

present, GCap would probably not have been offered the service using St Hilary, GCap's preferred site, in addition to having had to pay a higher price.

The parties' preference for using own sites

36. We have been given a few examples by third parties that indicate that the parties, where possible, give preference to using their own sites. We do not dispute there are only a few pairs of sites where substitution may be possible. Ofcom has indicated 11 such pairs of sites.¹⁶
37. The BBC submitted that Choice FM and Virgin FM had switched from Croydon to Crystal Palace; GCap told us that when the parties bid to provide network access and managed transmission services to its XFM South Wales each party favoured one of its own sites as the second site (Wenvoe for NGW and St Hilary for Arqiva). In relation to its Kerrang! radio station's application for the third West Midlands regional FM licence in October 2003, Emap told us that Arqiva proposed to use its own site at Lichfield while NGW proposed to use the Radio Authority's suggested site at Sutton Coldfield as described in the application documentation (an NGW site). In addition, the RadioCentre told us that it was not uncommon for local DAB licence applications (which more often need multiple sites than does FM local radio broadcasting) to be submitted with a choice of sites, depending on who the provider of managed transmission service is.¹⁷
38. The parties countered that the radio stations involved in these examples did not themselves consider the sites to be substitutable, as they often showed preference for one combination of sites over another.

¹⁶Ofcom submission to the OFT. Some of these pairs of sites have economically significant coverage areas including large metropolitan areas.

¹⁷Source: CC hearing with the RadioCentre.

39. The proposition that there are alternative ways in which MTS/NA for a given radio station can be supplied does not imply that broadcasters will be perfectly indifferent between alternatives. What is crucial is that, with a single provider of MTS/NA, the choice would probably never be given to broadcasters in the first place, and the proposed services by the monopolist provider could fail to match the broadcasters' preferred alternatives.
40. Third parties have suggested that the parties showed a preference for their own sites when submitting a proposal for transmission services. We agree that there may be some indications of this but we also believe that the examples are few and hard to generalize. The possibility remains that there may be an advantage to owning sites to include in the provision of MTS/NA. Such an advantage may result if the charges for network access are high compared with the costs incurred for using own sites. Third parties—lacking more of the crucial sites—would thus be at a disadvantage relative to the parties when pricing MTS/NA services to radio stations.
41. The parties provided us with detailed information to counter the view that they had given preference to using own sites. A first set of data, for the five FM licences tendered since 2003, based on information from Ofcom, shows that Ofcom generally indicates preferred sites (in four out of five cases) when it announces new licences and that applicants almost always follow these indications.

TABLE 1 Licence applications involving the site 'pairs' since 2003

<i>Licence</i>	<i>Ofcom recommended site</i>	<i>No of applicants</i>		<i>Site used by winning applicant</i>
		<i>Using recommended 'pair'</i>	<i>Other 'pair'</i>	
Belfast (FM–2005)	Black Mountain	11	1	Black Mountain
Solent (FM–2005)	Chillerton Down	13	1	Chillerton Down
Durham (FM–2005)	-	2	0	Burnhope
North-east England (FM–2005)	Burnhope	13	0	Burnhope
Cornwall (FM–2004)	Caradon Hill	8	0	Caradon Hill

Source: Main parties, based on data from Ofcom website.

42. In a second set of data, the parties provided information on their own applications for MTS/NA contracts in respect of new DAB licences and the instances in which different combinations of sites were proposed. This indicates that there were two occasions (in a total of seven licences) where one of the parties suggested one of its own sites, different from that of other applicants. In addition, in four out of seven cases, the parties offered different combinations of sites between them.

TABLE 2 **Analysis of sites offered by Arqiva and NGW for DAB licences**

<i>DAB licences advertised since 2004</i>	<i>No of applicants</i>	<i>Different sites offered by Arqiva and NGW?</i>	<i>Common sites between Arqiva and NGW proposals</i>	<i>Different infill sites</i>
North Yorkshire	1	No	-	-
Oxfordshire	2	Yes (1 site)	Oxford Beckley (NGW) Boars Hill (NGW) Farthinghoe (Arqiva)	Arqiva—N/A NGW—Bretch Hill (<i>Thames Water site</i>)
Northamptonshire	2	No	Northampton (NGW) Geddington (NGW) Daventry (NGW)	
Herefordshire and Worcestershire	2	Yes (1 site)	Ridge Hill (Arqiva) Malvern (NGW)	Arqiva—Lickley Hills (<i>water company/Orange site</i>) NGW—Bromsgrove (<i>NGW site</i>)
North-east Wales and West Chester	2	Yes (1 site)	Moel-y-Parc (Arqiva site) St Johns Beacon (land securities)	Arqiva—Hope Mountain (<i>Dee Communications</i>) NGW—Wrexham Rhos (<i>Arqiva site</i>)
Derbyshire	1	No	-	-
Hertfordshire, Bedfordshire, Buckinghamshire	2	Yes (2 sites)	Sandy Heath (Arqiva site) Hemel Hempstead (BT) Zouches Farm (BT) Bow Brickhill (NGW) High Wycombe (Arqiva)	NGW—Quainton Hill (<i>Thames Water site</i>) and Brookmans Park (<i>NGW site</i>) Arqiva—Hertford Heath (<i>BT site</i>) and Stevenage (Pin Green) (<i>water company site</i>)

Source: Main parties, based on data from Ofcom website.

43. Table 2 indicates that there are alternative ways in which a proposal of MTS/NA can be constructed. Different customers will have different preferences over alternatives. The view that there is value in the ability to choose between more than one provider is, we believe, strengthened by Table 2.