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Broadband Delivery UK (BDUK)

National Broadband Scheme for the UK

Guidance: Wholesale Access and Pricing

1. Summary

- 1.1 This BDUK document provides guidance to local bodies and other stakeholders on the requirement and application of price controls in broadband projects needed to comply with the relevant State aid guidelines applying to broadband interventions. This guidance is applicable to the rural broadband programme, including both local and community broadband projects.
- 1.2 Local broadband projects that are part of the rural broadband programme will be subsidised to varying extents by funding from DCMS, as well as other UK and potentially EU public sources. In almost all cases the funding for these local broadband projects will give rise to State aid.
- 1.3 In order to seek approval under the UK's umbrella State aid scheme (the National Broadband Scheme for the UK), projects will need to show that they have incorporated a mechanism to benchmark and control prices offered by the supplier in receipt of the aid in their contract with that successful supplier.
- 1.4 Controls should ensure that a supplier of superfast services is neither able to exploit its monopoly position to charge too much nor undercut other providers (e.g. of basic broadband services) by charging too little, relative to relevant benchmarks.
- 1.5 The approach to benchmarking set out in this document has been developed by BDUK through the procurement of its Broadband Delivery Framework and in light of European Commission (Commission) feedback. BDUK would also encourage local or community bodies operating outside of the Broadband Delivery Framework to be guided by these principles.
- 1.6 Local bodies must identify suitable benchmarks for all wholesale access products to be offered on the subsidised infrastructure. Wholesale access products will primarily be broadband ones but local bodies may also allow suppliers to propose non-broadband ones also (e.g. voice services, community hub backhaul, etc). They may also be standalone products or a basket of products. The appropriate benchmark for those products must therefore take into account the nature of the wholesale access

product, in addition to the point of wholesale access to the subsidised infrastructure. The appropriate wholesale access point is likely to vary depending on factors such as geography and the technology involved. Therefore, a benchmarking mechanism may involve a number of price ranges.

- 1.7 It is also essential that benchmarks recognise whether the publically funded superfast broadband services are to be sold incrementally to the existing line rental service or whether they will be sold on a standalone basis (such that consumers could cancel their existing line rental service). By doing so, the approach to benchmarking can be adjusted as appropriate during the life of a contract.
- 1.8 The rules applicable to the benchmarking of non-broadband products are broadly similar to the rules applicable to broadband products. However, additional conditions do apply (see paragraphs 4.19 – 4.26 below).
- 1.9 To ensure compliance with State aid requirements local bodies need to adhere to the benchmarking requirement detailed in this note. BDUK would highlight that the closer a local body can be aligned to the BDUK recommended approach set out in Section 3 of this guidance note the easier its path to approval under the aid scheme is likely to be. Compliance with the benchmarking requirement begins at the project design stage and must be explained in the tender documents. Relevant information on wholesale product benchmarks must be obtained from suppliers in their tender responses (see further paragraph 5.4 for example). Local bodies must require suppliers to undertake annual benchmarking reviews to ensure prices stay in line with market conditions. Deviations from the contractual benchmarking requirements must be brought back in line without delay and local bodies may look to BDUK for support with any such issue if needed. Similarly, BDUK will be on hand to assist local bodies if any complaints are made in respect of access prices to products offered on the subsidised infrastructure.
- 1.10 Local bodies are required to ensure that the benchmarking requirement detailed in this note is adhered to for the duration of their contracts with successful suppliers. In practice, this means for a minimum duration of seven years from when the new/upgraded broadband network becomes operational, to mirror the requirement in the Commission's Broadband Guidelines on the period during which wholesale access must be granted to the subsidised infrastructure. However, in many cases the benchmarking requirement (and indeed the wholesale access requirement) may be for a period longer than seven years as those Guidelines only lay down a minimum requirement. In such cases, the benchmarking requirement will last for a period as determined by the local body in its tender documents and subsequently reflected in its contract with the successful supplier.
- 1.11 This rest of this document explains the requirement for including a price control mechanism in broadband contracts, gives guidance on identifying appropriate benchmarks, and describes in more detail the roles to be performed by local bodies.

2. Requirement for price control mechanism in broadband projects involving State aid

- 2.1 This section explains the necessity for a price control mechanism with reference to Commission guidelines in this area and provides an introduction to the BDUK requirement under the umbrella aid scheme. Section 3 below sets out BDUK's recommended approach to the price control mechanism in more detail.

2.2 Commission requirement

2.3 The inclusion of a price control mechanism is a Commission requirement if aid for broadband projects is to be approved. Therefore BDUK has had to ensure this requirement is reflected in the umbrella aid scheme. BDUK must also ensure that this requirement is subsequently satisfied by all local bodies who wish to rely on that scheme. BDUK will be unable under the umbrella aid scheme to approve any local body that fails to comply with the price control requirement.

2.4 Further detail on the Commission's requirement and the purpose of the benchmarking exercise is set out in the Commission's Broadband Guidelines:

“Benchmarking is an important tool for ensuring that the aid granted will serve to replicate market conditions like those prevailing in other competitive broadband markets. Wholesale access price, should be based on the pricing principles set by the NRA and on benchmark, the average published wholesale prices that prevail in other comparable, more competitive areas of the country or the Union shall be taken or, in the absence of such published prices, prices already set or approved by the NRA for the markets and services concerned. If there are no published or regulated prices available for certain wholesale access products to benchmark against, the pricing should follow the principles of cost orientation pursuant to the methodology established in accordance with the sectorial regulatory framework”.

2.5 The Commission's guidance on the benchmarking pricing exercise has two main objectives:

- (a) To ensure that public funds are used in a manner that minimises distortion to a commercially functioning market;
- (b) To ensure that wholesale access to the publically funded service is effective, in particular ensuring that it replicates the prevailing commercial conditions.

2.6 BDUK requirement

2.7 BDUK will require all local and community bodies seeking to rely on the National Broadband Scheme for the UK to include a benchmarking pricing mechanism in their contract with the successful supplier. This mechanism, including the benchmarking criteria, should be set out clearly in the first instance in the tender documents issued to tenderers.

2.8 Such a mechanism must set out the framework applicable to current/basic broadband and Next Generation Access (NGA) broadband. It must also establish the mechanism applicable to non-broadband products (should BDUK/local/community bodies wish to allow suppliers to deliver those products in addition to the primary broadband ones). Non-broadband products could include voice services, packaged voice/broadband services and any other services (e.g. community hub backhaul, public sector connectivity and business connectivity).

2.9 As regards the Broadband Delivery Framework, BDUK intends that local bodies will identify appropriate NGA broadband and current generation broadband benchmarks. Wholesale access prices (to access the subsidised infrastructure) should then be

constrained with reference to those benchmark prices. As a matter of principle, the wholesale access prices should be similar to those in other competitive areas of the country/EU, without limiting the possibility for prices to go lower or higher if well justified.¹

- 2.10 This is because at the present time where the commercial market has provided superfast broadband services, a pricing premium for these services is being applied. This is a perfectly rational strategy given that superfast broadband is simply a higher performing broadband service. Thus, the general expectation is that consumers using current generation broadband services will upgrade to superfast broadband services. Superfast broadband will therefore mainly be a substitute for current generation broadband – a single consumer is very unlikely to require both superfast and current generation broadband services at the same time.
- 2.11 In most of the areas where BDUK is planning to use public funds to subsidise the deployment of superfast broadband services, the commercial market has already delivered current generation broadband services. We will therefore have the situation where publically funded superfast broadband services will be competing with commercially funded current generation broadband services.
- 2.12 If any consumer elects to take the publically funded service over the commercially funded service then this will represent a distortion to the commercial market. In order to minimise this distortion, it is therefore essential that the publically funded services are not provided at a price which is “too low” compared with the likely outcome in a commercially driven market. One way to achieve this is to require the prices for publically funded services to not be lower than commercial benchmarks for comparable services in more competitive/commercial areas (unless objectively justified²). In practice this will mean that the minimum price for publically funded superfast broadband services will be set by reference to the price of comparable services which are being provided by the commercial market in other areas.
- 2.13 Such an approach is consistent with the Commission’s Broadband Guidelines, as it aims to minimise potential distortions by ensuring that prices for publically funded services are not set at a lower level than those that prevail in other comparable, more competitive areas (unless objectively justifiable, see above). It will also ensure that the aid granted will serve to replicate market conditions like those prevailing in other competitive broadband markets.
- 2.14 There will also be a presumption that all products shall have a ceiling price equal to a set level (i.e. [X%]) above that of the benchmark products (to be determined in the course of the tender process), unless the supplier can demonstrate that such prices are necessary for a sustainable business model and that this will not lead to the customer being overcharged.
- 2.15 The purpose of this ceiling is so the pricing of access facilitates a sustainable business model but does not go beyond this to the extent that it hinders the policy

¹ See paragraph 58 of *European Commission, State aid SA.33671 (2012/N), National Broadband scheme for Broadband Delivery UK, 20.11.2012*, at http://ec.europa.eu/competition/state_aid/cases/243212/243212_1387832_172_1.pdf

² BDUK understands from the Commission that it can be acceptable under the Broadband Guidelines to price lower than the price currently imposed on the Significant Market Power (SMP) operator under the applicable regulatory framework. BDUK’s approach to benchmarking has been developed in this light.

objectives of increasing consumer access to superfast broadband. For example, if the price was allowed to be set at a level significantly in excess of comparable (but competitively provided) markets but was not objectively justifiable, it may unnecessarily limit access to superfast broadband services if it is also at a level at which consumers are ultimately unwilling to pay.³ Setting a ceiling will also ensure that the access to publicly funded assets will replicate the prevailing commercial conditions in other competitive broadband markets. In most commercial models this is likely to be self-regulating due to the price elasticity of demand for superfast broadband.

3. BDUK recommended approach to benchmarking

3.1 The approach to benchmarking set out in this document has been developed by BDUK through the procurement of its Broadband Delivery Framework and in light of Commission feedback. BDUK would encourage local and community bodies operating outside of the Broadband Delivery Framework to be guided by this approach, particularly if applying to BDUK for State aid approval under the National Broadband Scheme for the UK.

3.2 In its State aid notification, BDUK set out its proposed approach to benchmarking in more detail (it was also set out in the latest tender document issued to bidders competing for a place on the Broadband Delivery Framework)⁴:

- (a) Every wholesale access product ("product") sold on the subsidised network will be under benchmark controls;
- (b) There will be a presumption that all products shall have a floor price equal to that of benchmark wholesale access products in those parts of first two-thirds with similar characteristics ("benchmark products");
- (c) There will be a presumption that all products shall have a ceiling price equal to a set level (i.e. [X%]) above that of the benchmark products (to be determined in the course of the tender process), unless the supplier can demonstrate that such prices are necessary for a sustainable business model and that this will not lead to the customer being overcharged (see further (e) below);
- (d) In the case of non-broadband wholesale access products (i.e. secondary to the market that is being targeted), there are not expected to be any circumstances that would justify variation below benchmarks;
- (e) In the case of broadband products, there may be limited variation below and above benchmark if well justified. Such justification would need to incorporate:

³ In other words, the objective of increased superfast broadband access could be furthered with a lower access price which is more reflective of the market conditions in other competitive broadband markets and still maintains a sustainable business model.

⁴ [DN - Do we want to reference the Broadband Delivery Framework Benchmarking Schedule as opposed to the notification document?]

- (i) Support for the need for the variation in price, e.g. low population density, scattered villages, difficult clustering and associated failure to attract internet service providers (ISPs);
 - (ii) Demonstration that end-user pricing will be and remains consistent with end-user pricing in the final third;
 - (iii) Demonstration that alternative commercial mechanisms have been considered first;
 - (iv) The variation in price is limited in time, e.g. until establishment of first major ISP, until a set number of years into the contract (to be determined in the course of the tender process), or until there is any significant change in the supplier's ability to attract users on to the network;
- (f) The Broadband Delivery Framework will enable local bodies to benchmark supplier actual prices annually against industry data (supported by Ofcom as described below). Supplier actual prices will be subject to a degree of tolerance against the data point;
- (g) Where there is clear divergence against the benchmark, the supplier is required to bring its pricing back in line, or otherwise the local body will escalate the anticipated State aid transgression to BDUK as the National Competency Centre or the European Commission.

3.3 BDUK recognises that the detailed application of these benchmarking principles will need to be conducted on a case by case basis by local/community bodies due to the potential variability in approaches to the delivery of NGA broadband by different bidders (e.g. different access points, inclusion of non-broadband services etc). To that end BDUK will be on hand to offer support and guidance. BDUK will also seek to update this guidance note as local broadband projects begin rolling out to ensure lessons from early projects are learnt and shared with local bodies and other stakeholders. BDUK may also seek technical advice from Ofcom where appropriate should novel or different benchmarking mechanisms be proposed.

3.4 BDUK would encourage local bodies to raise any potential issues with it sooner rather than later in order to facilitate consideration of a local body's application to rely on the umbrella aid scheme, which will include consideration of the benchmarking mechanism. Further information on BDUK's two stage State aid review process is set out in Section 5 below.

4. Identifying appropriate benchmark products

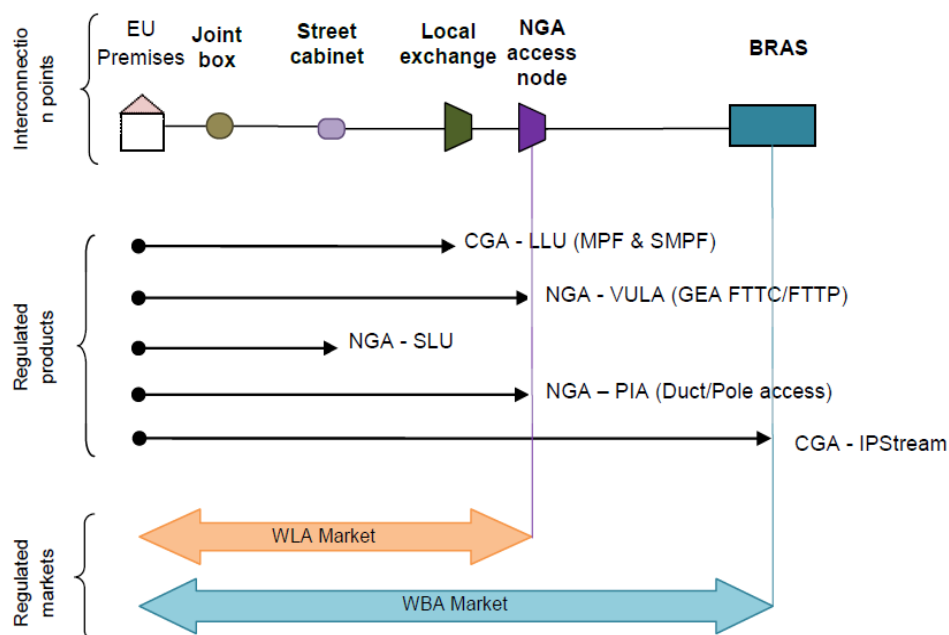
4.1 A key part of the benchmarking mechanism is identifying appropriate benchmark products. Appropriate benchmark products will be a factor of both the relevant product and the relevant wholesale access point.

4.2 Appropriate products will be wholesale access products (or a basket of wholesale access products) in those areas where broadband is commercially provided with similar characteristics to the access product(s) (or basket of access products) that will be provided using the subsidised infrastructure.

4.3 However, as noted above, the relevant benchmark will also depend on the point of wholesale access to the subsidised infrastructure. In principle the wholesale access point should be positioned as far upstream as possible whilst facilitating effective and sustainable downstream competition. Thus, a wholesale access point positioned any further upstream would not achieve effective and sustainable downstream competition whilst a wholesale access point positioned further downstream would be forgoing some aspects of competition. In practice the optimum wholesale access point is likely to vary depending on factors such as geography/location, size of the local broadband project and the technology involved. This implies that the benchmarking exercise might suggest a number of price ranges that would vary according to the position of the wholesale access point in the broadband supply chain. As a result, the appropriate benchmark product to use will need to be considered on a case by case basis, taking the other principles set out above into account.

4.4 In order to illustrate the potential range of access points which may be used as appropriate product benchmarks, Figure 1 shows, as an example, a network diagram of the current wholesale local access (WLA) market and wholesale broadband access (WBA) market remedies. It also shows BT's network access points which communication providers (CPs) need to interconnect to in order to provide broadband and/or voice services to end users (the interconnection points mark effectively the boundaries beyond which traffic is handed over to the CP's network).

Figure 1 – WLA and WBA markets: network interconnection points and remedies



4.5 **Identifying appropriate benchmark products - incremental broadband versus standalone**

4.6 Most commercially provided broadband services are provided on the basis that they are incremental to a telephone line rental service. Thus, consumers need to purchase line rental as well as the broadband service.

4.7 This pure bundle approach is used to ensure full cost recovery.⁵ A fixed broadband service still requires a physical connection into the consumers premise (e.g. a telephone line), thus if a consumer is already purchasing a telephone service, which includes line rental, a broadband service can be added incrementally. Essentially the telephone service charge (line rental) is used to recover the cost of the physical connection, whereas the broadband charge is used to recover the broadband specific costs. It is important that this commercial pricing structure is recognised and captured in any benchmarking pricing exercise. It is therefore necessary to understand whether the publically funded superfast broadband service will be sold incrementally to the existing line rental service or whether it will be sold on a standalone basis (such that consumers could cancel their existing line rental service), so the approach to benchmarking can be adjusted accordingly.

4.8 **Incremental to existing line rental service**

4.9 In this situation the consumer would be required to purchase an existing line rental service before they can purchase the publically funded superfast broadband service. Accordingly, the appropriate commercial benchmark would be the price for an incremental superfast broadband service (e.g. BT's FTTC GEA prices).

4.10 This situation could occur in one of two ways. Firstly, it could occur naturally due to the delivery method of the superfast broadband services. For example, if the superfast broadband service was provided by using shared access to BT's sub-loops (SMPF-SLU) then there would be a built-in requirement for line rental to be purchased separately.

4.11 Alternatively, it could occur due to a contractual requirement in the State aid contract. For example, the local body could make the purchase of a commercial line rental service a prerequisite in order to replicate the prevailing commercial conditions and thus minimise distorting a commercially functioning market.

4.12 **Standalone**

4.13 In this situation the consumer would be able to purchase the publically funded superfast broadband service without needing also to purchase any existing commercial services. It may be that the publically funded provider chooses to replicate the commercial market by having a two part pricing structure (line rental plus broadband). Alternatively the publically funded provider could have a single standalone superfast broadband charge. Either way it is the total charge that is relevant to the benchmarking exercise.

4.14 The appropriate commercial benchmark would be either: the price for a standalone superfast broadband service (e.g. BT's FTTP GEA prices); or the price for an incremental superfast broadband service (e.g. BT's FTTC GEA prices) plus the price for line rental.

4.15 This situation will occur when the superfast broadband service operates independently to any existing line rental services. For example, if the superfast

⁵ Note that "full cost recovery" is relevant only to the supplier's own investments; this does not include the State aid part of the investment.

broadband service was provided by using BT's full sub-loops (MPF-SLU), or if a new connection is established (e.g. FTTH).

- 4.16 As a result, the composition of the benchmark for the total wholesale access price should, no matter how it is provided, include not just the broadband rental but also the telephone line rental. This is because many broadband products available today are only available if the consumer purchases a telephone service too, and so this approach to benchmarking minimises the potential distortion to the commercial current generation broadband and line rental/fixed telephony markets.
- 4.17 As already highlighted above, BDUK anticipates that it may seek technical advice from Ofcom during the life of the framework agreement in terms of the appropriateness of the wholesale benchmark pricing points and pricing policy proposed by suppliers.
- 4.18 **Non-NGA / non-broadband services**
- 4.19 It is recognised (and has indeed been stated by bidders during the Broadband Delivery Framework tender process) that suppliers may wish to offer other services such as voice, current broadband and leased lines in addition to superfast broadband services based on the subsidised broadband infrastructure. BDUK understands from the Commission that in principle there is nothing to prevent such an approach. The UK therefore intends to leave this possibility open under the umbrella aid scheme, albeit subject to conditions and controls as described below. The UK hopes that this will, in appropriate circumstances, enable the aid intensity of a broadband project to be reduced. As a result, BDUK's approach to benchmarking reflects the full range of services that may be offered on the basis of the subsidised broadband infrastructure.⁶
- 4.20 In relation to the benchmark product to be used, BDUK has considered the potential distortions that the provision of non-broadband products could have on commercially provided services and how to minimise these potential distortions.
- 4.21 As discussed above, if the publically funded superfast broadband service is provided on a standalone basis, or more accurately without the need for the consumer also to purchase an existing line rental service, then this would be distorting the commercial markets for both current generation broadband and line rental/fixed telephony. However, one way of minimising the distortion is to require the prices for publically funded services not to be lower than commercial benchmarks for comparable services.
- 4.22 This same logic should apply to any markets that risk being distorted by public funds. Therefore, if BDUK believes that it is appropriate for non-broadband products to be provided (in addition to superfast broadband) then in order to minimise distorting the commercial market(s), the prices for the publically funded services should not be lower than commercial benchmarks for comparable services.
- 4.23 BDUK intends that the following conditions will apply regardless of the non-broadband product sold:

⁶ [DN – as per footnote 5, do we want to reference Benchmarking Schedule in Framework?]

- (a) Deployment will be limited to the same type of area as targeted by the deployment of the subsidised broadband infrastructure, i.e. basic white area (in the case of basic broadband) and white NGA area (in the case of NGA broadband). It will not be possible in the case of the former to build out into basic black or basic grey areas or in the case of the latter into black NGA or grey NGA areas, even if such extension were funded by private sector investment;
- (b) Benchmarking of the non-broadband products must comply with the benchmarking regime outlined in paragraph 7.17 of the notification and this guidance note which provides further practical guidance on the regime;
- (c) Wholesale access to the subsidised infrastructure must be permitted to other access seekers in line with the wholesale access requirements outlined in paragraph 7.16 of the notification (and accompanying guidance note) in order to enable them to offer the same non-broadband products on equivalent terms;
- (d) Additional non-broadband revenues beyond the forecast levels will contribute towards the identification of excess subsidy as part of the claw-back mechanism.

4.24 BDUK considers that it is also appropriate to attach the following constraints to selling different non-broadband products:

- (a) Voice services: There will be no additional restrictions on selling voice services bundled with broadband services (on the basis that this reflects the existing marketplace for broadband services);
- (b) Community hub backhaul: Backhaul services may only be sold from any nodes in the supplier's network identified by the parties as a community hub (to enable community models to prosper);
- (c) Mobile backhaul: Mobile backhaul services may only be sold for new mast sites (in order to increase opportunities for extending mobile coverage);
- (d) Public sector connectivity: There will be no additional restrictions on selling non-broadband data connectivity to public sector sites (in order for the public sector to leverage its investment);
- (e) Business connectivity: Leased lines and other circuits for enterprise customers may only be sold if the supplier conducts market mapping analysis that evidences market failure in the existing supply of business connectivity in the area, and as accepted by the local body (non-broadband enterprise connectivity is not the target of this intervention and negligible benefit is achieved by distorting this market).

4.25 BDUK and local bodies will assess the extent to which the commercial sustainability of a supplier's business case is dependent on the scale of these additional revenues, and the risk to provision of broadband in that area beyond contract expiry.

5. Benchmarking and the local body's role

5.1 Project design

5.2 Local bodies need to ensure compliance with State aid requirements when designing their projects. An integral part of this is ensuring compliance with the benchmarking requirement as detailed in this guidance note. The closer a local body can be aligned to the BDUK recommended approach set out in Section 3 of this guidance note the easier its path to approval under the aid scheme is likely to be.

5.3 In the first instance local bodies need to be clear on their benchmarking parameters in their tender documentation. In the case of those following the BDUK recommended approach, this would include those parameters set out in paragraph 3.2, including the implications of departure from agreed benchmarking principles. Local bodies must also be clear in their tender documentation as to the period during which the benchmarking requirement will apply which in practice will be for the duration of the contract. In any event, it must mirror the duration of the wholesale access obligation under the contract, which must be for a period of not less than seven years from when the new/improved broadband network becomes operational.

5.4 Local bodies should also look to extract the relevant information from suppliers to be able to compare their different offerings. This would include: the wholesale access products they propose to offer (NGA, non-NGA, and non-broadband, to the extent such products are permitted by the local body); their proposed benchmarks for each of these products and the justification as to why such benchmarks are suitable; the component parts of these benchmarks where appropriate; and the proposed benchmarking mechanism and pricing policy.

5.5 Accepting benchmarking points

5.6 During the procurement process, bidders should submit their wholesale product pricing along with the relevant benchmarks. The supplier should set out a comparison of the wholesale product prices against the benchmark data, justifying and providing evidence of any deviation to the local body, and setting out proposals for changes to the pricing to bring in line with the benchmarks.

5.7 The local body will need to assess the supplier's justification for any price variations using the guidance set out in this document and with the support of BDUK.

5.8 Supplier bids should include the benchmark data for their wholesale products. This needs to be agreed by the local body.

5.9 State aid notification

5.10 Under the National Broadband Scheme for the UK BDUK will consider local bodies' applications to rely on the umbrella aid scheme. There is an application template for this purpose.⁷ Local bodies will be required to complete and return this to BDUK, together with relevant supplementary documentation indicated in the template.

⁷ State aid application form is available on request from Local Bodies email: stateaidforbroadband@culture.gsi.gov.uk

- 5.11 The template requires local bodies to confirm they have complied with the benchmarking requirement (i.e. the requirement set out in the BDUK State aid notification and elaborated upon in this guidance note). More specifically, this means that local bodies will have to:
- (a) Confirm whether they followed the BDUK recommended approach to benchmarking set out in Section 3 of this guidance note;
 - (b) If not, explain the extent to which they departed from it, reasoning for that approach, and how that alternative approach complies with the benchmarking principles set out in this guidance note;
 - (c) Provide relevant extracts from the tender documentation setting out the local body's benchmarking requirements;
 - (d) Provide a copy of the relevant contract extract showing the benchmarking mechanism agreed with the successful supplier, including detail of the benchmark products (for all of NGA, non-NGA, and non-broadband products) and pricing policy.
- 5.12 In the event that the proposed approach is novel or different BDUK may seek technical advice from Ofcom in terms of the appropriateness of the wholesale benchmark pricing points and pricing policy proposed.
- 5.13 BDUK's review of compliance with the benchmarking requirement will be conducted as part of its overall second stage review. Provided local bodies can demonstrate compliance with this and other requirements (e.g. wholesale access, claw back, etc), BDUK would hope to be able to provide approval under the umbrella aid scheme to enable the public funding to be given under the contract with the successful supplier.
- 5.14 Reviewing wholesale product pricing**
- 5.15 During the contract life, the supplier shall conduct an annual benchmarking review of the wholesale product prices against the benchmark data. The supplier should set out a comparison of the wholesale product prices against the benchmark data, justifying and providing evidence of any deviation to the local body, and setting out proposals for changes to the pricing to bring in line with the benchmarks.
- 5.16 Where a supplier is obliged to conduct this review on the same products against the same benchmark data for multiple local bodies, BDUK may coordinate the process to minimise effort for all parties.
- 5.17 The local body will need to assess the supplier's justification for any price variations using the guidance set out in this document and with the support of BDUK.
- 5.18 Where the benchmark review identifies prices that are higher or lower than the benchmarks and the supplier is unable to provide reasonable justification for the deviation, the local body should require that the supplier adjusts their pricing to better align with the benchmark data as soon as reasonably practical and/or report such deviation to BDUK.
- 5.19 Management of complaints**

5.20 It is expected that any complaints in relation to access pricing will be directed in the first place to the successful supplier. For that reason, local bodies must ensure that their contracts require the supplier to notify them immediately if any such complaint is received. In most cases it is expected that the matter will be able to be resolved at that level. Local bodies should work with suppliers to determine whether the supplier is actually delivering what it promised to under the contract and that it is not departing from those terms. Should it not be possible to resolve the matter at that level, the matter must be escalated by the local body to BDUK. BDUK will intervene as appropriate to resolve the dispute. It may also seek technical advice from Ofcom if required to resolve the dispute.

5.21 **Reporting and compliance**

5.22 BDUK requires local bodies to report certain information to it on a regular basis to allow BDUK to monitor the delivery of the local broadband projects and, crucially, their ongoing compliance with the umbrella aid scheme conditions. State aid compliance must be ensured throughout the life of a local body's contract with the successful supplier. The specific reporting obligations and the reporting frequency are set out in the grant agreement which all local bodies must sign if they wish to receive BDUK programme funding. Briefly, these obligations will include a requirement to report on (benchmarking related reporting obligations are highlighted in bold for the purpose of this guidance note):

- (a) Delivery of the local broadband project, in particular as against the project deliverables set out in the local broadband plan and ultimately reflected in the contract relating to the delivery of the local broadband project;
- (b) Expenditure to date on the project, in particular as against the planned expenditure;
- (c) Any variations to the scope or scale of the local broadband project;
- (d) If any project milestones have been missed;
- (e) Any variations to the wholesale access obligation agreed with the successful supplier;
- (f) **Any variations to the benchmarking provision;**
- (g) Whether the claw back mechanism has been exercised and, if so, the outcome of that exercise;
- (h) **Any challenges (e.g. State aid or public procurement related) lodged with the local body or relayed to the local body in relation to the project. Such challenges could relate to access pricing.**