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## **Broadband Delivery UK**

### **2016 National Broadband Scheme for the UK**

#### **State Aid Guidance: Overview of the Scheme and Criteria for use**

#### **1. INTRODUCTION TO THE NATIONAL BROADBAND SCHEME FOR THE UK**

- 1.1. The Government has set a target to ensure superfast broadband coverage to 95% of homes and businesses by the end of 2017. That vision will be delivered through encouraging commercial investment and through multiple broadband projects due to be rolled out at a local and community level by various bodies (referred to as “implementing bodies”).
- 1.2. These local and community broadband projects will receive varying levels of public funding from the Broadband Delivery UK (BDUK) programme, as well as other sources of public funding.
- 1.3. In almost all cases, therefore, the funding for these local and community broadband projects will give rise to State aid: the funding is from or through State resources, it will confer a selective advantage on the suppliers appointed to deliver the broadband projects (and on other third parties), and it is liable to affect competitive and trading conditions in the EU.
- 1.4. State aid must usually be notified to the European Commission, unless there is an available exemption or an approved aid scheme that can be relied on.<sup>1</sup> The National Broadband Scheme for the UK is such an approved aid scheme.

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<sup>1</sup> Aid schemes are very common in the UK generally, and in the wider EU, including for broadband schemes. Aid schemes are defined in Council Regulation (EC) No 659/1999 as “any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount” (Article 1(d)).

Provided a local or community body satisfies the relevant criteria established by the Scheme, it will not need to notify the aid for its broadband project to the Commission. Instead, it will need to demonstrate to BDUK that the National Broadband Scheme criteria are met. BDUK has received prior approval from the Commission that satisfaction of these criteria is sufficient to demonstrate that the aid is compatible with EU State aid rules.<sup>2</sup>

## 2. **Benefits of the 2016 National Broadband Scheme for the UK**

2.1. The benefits of the 2016 National Broadband Scheme (the 2016 NBS) for local and community bodies are:

- No need to submit a formal notification to the Commission;
- Quicker decisions as to whether local and community broadband projects are State aid compliant; and
- State aid support from BDUK as administrator of the 2016 NBS (in liaison with the Department for Business, Innovation and Skills' State Aid Branch and Ofcom).

## 3. **Whom the Scheme is available to**

3.1. The Scheme is available to local and community broadband projects across the UK, including England, Wales, Scotland and Northern Ireland.

3.2. These projects could be run by:

- Local authorities (including groups of local authorities) within the UK<sup>3</sup>;
- Local Enterprise Partnerships established between any of those local authorities and businesses<sup>4</sup>;
- BDUK;
- the Welsh Ministers;
- the Scottish Government;
- Scottish Enterprise;
- Highlands and Islands Enterprise;
- the Department of Enterprise, Trade and Investment in Northern Ireland;

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<sup>2</sup> European Commission, SA. 40720 (2016/N) – National Broadband Scheme for the UK for 2016-2020, 26.05.2016, at [http://ec.europa.eu/competition/state\\_aid/cases/263954/263954\\_1760328\\_135\\_4.pdf](http://ec.europa.eu/competition/state_aid/cases/263954/263954_1760328_135_4.pdf)

<sup>3</sup> <https://www.gov.uk/find-your-local-council>

<sup>4</sup>

<https://www.gov.uk/government/policies/supporting-economic-growth-through-local-enterprise-partnerships-and-enterprise-zones/supporting-pages/local-enterprise-partnerships>

- Community interest companies (CICs) – limited companies with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage;<sup>5</sup>
- Charities;
- Social enterprises - businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.<sup>6</sup>
- Groups of non-ISP businesses (e.g. a group of businesses seeking to deliver NGA infrastructure to a business park);
- Community trusts - business entities or agencies established for the administration of funds placed in trust for the public benefit like community media, educational and other charitable purposes in perpetuity. They are independent, not-for-profit bodies set up to represent an area of public concern; and
- Other formally constituted groups.

#### 4. Eligible projects

- 4.1. A broadband project will be covered by the Scheme provided it seeks to provide a **white NGA area** with access to NGA infrastructure capable of delivering speeds of at least 30 Mbps.
- 4.2. White NGA areas are areas where NGA networks do not exist and are not likely to be built within 3 years.
  - 4.2.1. In the case of investment in NGA broadband in areas where basic broadband already exists (delivering speeds of up to 30 Mbps), the project must deliver a 'step change'<sup>7</sup> in broadband capability. Download speeds must be at least doubled and substantially higher upload speeds provided.
  - 4.2.2. By way of example, for a fixed network, it would not be a "step change" to upgrade from ADSL to ADSL2+ presuming both technologies are delivered from the exchange along the same metallic path. Such upgrades of active components of an existing network would not usually ensure a "step change". However, as noted in the

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<sup>5</sup> Examples of some CICs are available at: <http://www.bis.gov.uk/cicregulator>

<sup>6</sup> Further information on social enterprises can be found at: <http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1077475650>

<sup>7</sup> See section 3.14 of *European Commission, SA. 40720 (2016/N) – National Broadband Scheme for the UK for 2016-2020*, 26.05.2016, at [http://ec.europa.eu/competition/state\\_aid/cases/263954/263954\\_1760328\\_135\\_4.pdf](http://ec.europa.eu/competition/state_aid/cases/263954/263954_1760328_135_4.pdf)

Commission's approval of the Scheme, the deployment of FTTC combined with a vectoring upgrade could constitute a step change.

- 4.3. A broadband project will not be covered by the Scheme if it relates to grey or black NGA areas (areas where one or more NGA networks already exist).<sup>8</sup>
- 4.4. The 2016 NBS also notes that interventions will target typically harder to reach and lower density NGA white areas (which exclude high density urban areas).

## 5. Next Steps

- 5.1. BDUK will provide a suite of guidance to support implementing bodies, potential suppliers and other stakeholders on the State aid requirements of the 2016 NBS.
- 5.2. These include:
  - **Delivery & Funding Models** - explaining the different models that could be used to deliver NGA broadband.
  - **Mapping & Public Consultations** - detailing how intervention areas are identified.
  - **The role of NGA Technology under the UK's State aid scheme** - detailing the technical requirements to be eligible under the scheme.
  - **Open Access Network Requirements** - detailing the wholesale access requirements and technical specifications.
  - **Wholesale Access Price Benchmarking** - detailing how to determine a price benchmark for wholesale products.
  - **Procurement** - detailing the steps to running a compliant procurement to select a supplier for a local broadband project..
  - **Clawback & Transparency Requirements** - detailing the specific requirements of the claw-back mechanism, and the monitoring and reporting obligations, which are required under the Scheme
- 5.3. Should you decided to use the 2016 NBS for your broadband project, it will be assured by the National Competence Centre (NCC) as having met the requirements of the Commission's Decision to approve the Scheme. This assurance process is completed in phases, starting with verification of the mapping approach through to procurement and will continue during implementation. The project must have State aid approval from the NCC before contracts are entered into and State aid is committed.

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<sup>8</sup> Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF>

- 5.4. Should you have questions regarding a project under the 2016 NBS, please contact BDUK's State Aid National Competence Centre: [stateaidforbroadband@culture.gov.uk](mailto:stateaidforbroadband@culture.gov.uk).

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