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## **Broadband Delivery UK (BDUK)**

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

#### **Guidance: State aid Mapping and Public Consultation**

1. **Why do we need to analyse coverage, develop State aid maps, and carry out public consultations?**
  - 1.1 It is essential that implementing bodies carry out detailed mapping of the areas to be targeted by their broadband projects to make sure that only areas with speeds of less than 30 Mbps are targeted (“**white NGA** areas”). A broadband project will be covered by the 2016 National Broadband Scheme (NBS) provided it seeks to provide a **white NGA area** with access to NGA infrastructure capable of delivering speeds of at least 30 Mbps. Broadband projects that relate to grey or black NGA areas (areas where one or more NGA networks already exist) will not be covered by the scheme.
  - 1.2 Many implementing bodies already have a good knowledge of the presence of NGA infrastructure in their areas from having recently implemented broadband projects. Notwithstanding this, the broadband market is fast moving with new investment by existing operators and new entrants to the the market, and so the marketplace is likely to have changed since any previous mapping exercise.
  - 1.3 Maps will also need to be updated to reflect the requirements of the 2016 NBS. In particular, implementing bodies must take account of premise-level information (where available) on network operators’ existing footprints and future commercial investment plans.
  - 1.4 As a matter of best practice, implementing bodies should first carry out an Open Market Review (OMR) to validate and update their existing maps so that they take account of any amendments to existing coverage and/or plans for broadband infrastructure. This will also enable implementing bodies to define the areas to be

targeted in their procurements down to the level of individual premises (where such information is available from operators).

1.5 It is also mandatory that, prior to the start of the procurement process, implementing bodies validate with the market the white NGA area and their proposal as to how they intervene with public funding to provide broadband infrastructure. This is achieved via a public consultation, which is generally an online consultation allowing interested stakeholders (e.g. existing or potential national and local network providers, internet service providers, businesses, residents, etc) an opportunity to comment on the areas an implementing body intends to target in its procurement.

## 2. **Where do I start?**

2.1 For the majority of projects, existing maps from projects approved under the 2012 NBS or other State aid schemes will serve as a starting point for the detailed mapping exercise. However, these will require updating through an OMR and public consultation, as discussed above.

2.2 If an implementing body has not carried out a previous project, then its knowledge of broadband infrastructure is likely to be limited. To assist, BDUK holds baseline mapping data of broadband infrastructure across the UK, based on regularly updated information from BT, Virgin and KCOM (protected by non-disclosure agreements (NDAs)). This details the location of upgraded exchanges and cabinets capable of supporting fibre to the cabinet and also includes commercially sensitive information from Virgin Media on the location of its cable network.

2.3 Versions of the BDUK baseline mapping are available to implementing bodies (on the Huddle website), subject to any constraints on BDUK under an NDA or more generally in respect of distributing commercially sensitive information. Implementing bodies should note that the information is held only at a postcode level (not to the individual premise). It will, however, indicate the general provision of infrastructure in a particular area. If access to this information is required, please contact BDUK at [stateaidforbroadband@culture.gov.uk](mailto:stateaidforbroadband@culture.gov.uk)

## 3. **What level of detail is required?**

3.1 Implementing bodies are required to classify areas as NGA “White”, “Grey” or “Black” in accordance with the European Commission’s Broadband Guidelines:

- **White areas** are areas where NGA networks (capable of delivering reliable download speeds of at least 30 Mbps) do not exist and are not likely to be built within 3 years.
- **Grey areas** are areas where one NGA network exists or is likely to be built within 3 years.
- **Black areas** are areas where more than one NGA network exists or is likely to be built within 3 years.

3.2 To determine the classification of an area, implementing bodies are required to:

- take account of premises-level information from suppliers on their existing footprints and future commercial investment plans, to the extent they respond to OMRs and public consultations with this data.
- seek to define procurement areas down to the level of individual premises to be targeted, where information is available from operators.
- provide information in their procurements at the premises/infrastructure level, where operators provide that level of detail.

3.3 Whilst the 2016 NBS requires that implementing bodies seek to map at a premise level and every effort should be made to define the NGA White, Grey and Black areas to this level of granularity, it is acknowledged that in some cases this may not be possible. Where sufficient detail is not available at a premise level then mapping at a postcode level will provide sufficient granularity of an area for State aid purposes. Please note that mapping at an exchange level is not acceptable following feedback from the Commission.

#### **4. The Open Market Review (OMR)**

4.1 Implementing bodies should carry out an OMR by requesting information from network operators about their current broadband network coverage and any future plans to roll out broadband infrastructure (within the next 3 years). BDUK has produced a template proforma for use by implementing bodies.

4.2 Market engagement should be as wide as possible, ideally to all known operators. As a minimum, the OMR should request information from any network operator known to have broadband infrastructure in the relevant area and neighbouring areas. This would include the national incumbents but also any local providers that may have network coverage.

4.3 Implementing bodies should respond to any questions received from operators during the OMR. BDUK would encourage implementing bodies to discuss coverage with operators in both correspondence and meetings. Implementing bodies should also issue reminders to network operators in the event that they do not respond to the OMR.

4.4 Implementing bodies should log contact with network operators (whether via email or phone call) as this will enable them to demonstrate that every effort has been made to engage with network operators to ensure accurate mapping.

4.5 Following closure of the OMR and receipt of responses from network operators, implementing bodies should then prepare new or revised maps.

## 5. Mapping NGA broadband coverage

- 5.1 First, implementing bodies will need to assess whether existing or planned broadband infrastructure forms part of a basic or NGA broadband network. For further information see BDUK's guidance regarding "NGA Technology", which is based on the definitions of NGA qualifying technology in paragraphs 57 and 58 of the European Commission's Broadband Guidelines. In particular, the technology must provide a minimum download speed requirement of 30Mbps.
- 5.2 Broadly, NGA networks are fibre based networks (e.g. FTTC, FTTN, FTTP, FTTH and FTTB), advanced upgraded cable networks (e.g. DOCSIS 3.0) and certain advanced wireless access networks capable of delivering reliable high speeds per subscriber.
- 5.3 Implementing bodies will then need to classify areas as NGA White, Grey or Black, as outlined in section 3.

## 6. Mapping basic broadband coverage

- 6.1 The objective of the 2016 NBS is to extend the coverage of NGA broadband and does not provide for basic broadband interventions (i.e. delivering speeds of 2 - 30 Mbps).
- 6.2 However, implementing bodies must also map premises and/or areas as white, grey or black in terms of basic broadband networks (notwithstanding that broadband projects are able to target white NGA areas irrespective of whether or not basic broadband exists in the relevant area).
- **Basic White areas** are areas where basic networks (capable of delivering reliable download speeds of at least 2 Mbps) do not exist and are not likely to be built within 3 years.
  - **Basic Grey areas** are areas where one basic network exists or is likely to be built within 3 years.
  - **Basic Black areas** are areas where more than one basic network exists or is likely to be built within 3 years.
- 6.3 This mapping is required to confirm that the "step-change" requirement has been met. The 2016 NBS requires that, in areas where basic broadband already exists, the project must deliver a 'step change' in broadband capability. Download speeds must be at least doubled and substantially higher upload speeds provided, compared with existing or planned basic networks.
- 6.4 Where areas are mapped as grey or black for basic networks, implementing bodies must therefore demonstrate a 'step change' in broadband capability. Implementing bodies will need to collate information on the download and upload speeds provided

by any existing or planned basic network. (This could be presented as either a map or in data form.)

6.5 Implementing bodies should request this information as part of the OMR and also include mapping of basic broadband coverage in the public consultation. Given the step change requirements, implementing bodies should collect information about all networks present (or planned) within the relevant area and include this within the public consultation as this will inform the design of the subsidised NGA network.

## 7. **Assessing reported broadband infrastructure**

7.1 Implementing bodies need to take care in assessing an operator's claims of current and future coverage.

7.2 For **existing coverage**, implementing bodies should assess if services do in fact deliver the reported speed and/or coverage (as set out in section 6).

7.3 For **future plans**, operators who indicate that they intend to invest in relevant areas in the next three years are required to demonstrate that they have concrete and credible plans to deploy their own infrastructure in the next three years. In particular, implementing bodies may require operators to submit business plans, detailed calendar deployment plans, proof of adequate financing and any other type of evidence to establish the planned investment is credible.

7.4 Even where there is some evidence of concrete plans, there may remain doubt around the nature of a network deployment or planned deployment. This could include uncertainty regarding the technology deployed, the timing of the deployment or confirmation in respect of adequate financing for the plans.

7.5 In these circumstances, we recommend that implementing bodies monitor the progress made by a prospective network operator, as set out in paragraph 65 of the Broadband Guidelines.<sup>1</sup> This would include agreement upon the planned roll out in terms of milestones and other evidence that may be required to confirm performance of the network or finance available to build the network.

7.6 In the circumstances described above, implementing bodies should mark the area as "Under Review" in lieu of NGA "Grey" within their mapping. These areas will be subject to continued monitoring and verification of network operator's plans within the 3 year period and in the event that these commercial plans fall away these premises will be remapped to NGA "White" and the implementing body will be entitled to include them within the project's intervention area and consider them eligible for intervention.

7.7 Implementing bodies should write back to all network operators who responded to the OMR and confirm how any coverage claims have been treated in the revised mapping.

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<sup>1</sup> European Commission, SA. 40720 (2016/N) – National Broadband Scheme for the UK for 2016-2020, paragraph 57 [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)

## 8. Running a Public Consultation

8.1 The public consultation is a requirement of the 2013 Broadband Guidelines and the 2016 NBS. It tests how the implementing body has interpreted the submissions received to the OMR (including the definitions of the NGA “White” areas).

8.2 Launch of the consultation: The public consultation should be held following the assimilation of data received from the OMR. At least five days before you publish your document on your website you must let BDUK know you intend to publish your public consultation document and provide a link to it.

8.3 A consideration in regards to when to launch the public consultation is that the procurement process should preferably start within one month, and no later than six months, of the closure of the public consultation. This is to ensure that the mapping is as accurate as possible.<sup>2</sup>

8.4 Contents of the consultation: The 2016 NBS requires that a public consultation document contains:

- a description of the proposed broadband project, including information about the project’s objective, the scope of the project, and the amount of public funding involved;
- a description of the areas that could be targeted, defined down to the level of individual premises to be targeted (where possible);<sup>3</sup>
- NGA and basic maps (prepared as set out above);
- information about any views already expressed by stakeholders (during the OMR or otherwise);
- a request for operators’ views on the types of wholesale access products they would like to see offered on any newly created subsidised NGA network infrastructure; and
- details of how to respond, including the deadline for responses.

8.5 BDUK has produced a template public consultation for use by implementing bodies.

8.6 Implementing bodies may choose to include additional information, going beyond the Commission's minimum requirements, e.g. information on known current or

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<sup>2</sup> The start of the procurement process is an OJEU notice, however it is recommended that cognisance should still be given to the timing of the issue of the ITT or ITPD (if using competitive dialogue) to ensure that the consultation is timely relative to the detailed procurement.

<sup>3</sup> If an implementing body is targeting a subset of the white NGA e.g premises with current access speeds below 24Mbps then this should be described in the consultation.

future demand stimulation activities or information on other ongoing or future project tender process.

8.7 ***Length of the consultation:*** Once launched, the public consultation must be open for feedback from all interested stakeholders for at least one month. It is important to make clear in the public consultation document the deadline for responses, to ensure that there is a clear understanding of when the implementing body intends to "draw a line" in terms of defining its target areas.

8.8 ***Publication requirements:*** The consultation document must be published on a readily accessible website. In the first instance, this means publication on the implementing body's website. BDUK will also signpost public consultations (open and closed) from its website (see 8.2 above).

## 9. **Assessing responses to the public consultation**

9.1 All responses to the public consultation must be assessed. Any responses relating to mapping will need to be dealt with in the same way as responses to the OMR. In BDUK's experience, these responses are often minimal, as the public consultation is confirming the mapping conducted under the OMR.

9.2 If an implementing body does not accept a network operator's response, it should inform BDUK, which will then seek to resolve the matter in its role as scheme administrator.

9.3 If a supplier does not respond and the implementing body is aware that the supplier has infrastructure in the area that could be targeted or may have investment plans in the coming three years that may affect this area, the implementing body should contact the supplier directly in writing. If the supplier is still not forthcoming, the implementing body should seek advice from BDUK.

9.4 If a supplier does not respond and, to the best of an implementing body's knowledge, the supplier has no infrastructure or relevant investment plans in the area that could be targeted, the implementing body will be justified in drawing a line under its public consultation and finalising its mapping for its tender process.

9.5 The implementing body must then reply to all those who provided information to the public consultation, outlining how this has been treated in the final mapping.

9.6 It should also publish a summary report outlining the changes that have been made to the mapping following the public consultation. This should include the final maps. The report should be redacted to remove any commercially confidential information.

## 10. **What if a respondent's investment plans change or new plans are announced after the consultation?**

10.1 Implementing bodies are not required to take into account any investment plans announced by network operators following the conclusion of the public consultation, save where the implementing body wishes to do so. Provided that appropriate

mapping and public consultation has been undertaken, the 2016 NBS is clear that implementing bodies can rely on these results to define their target areas and set the scope of their local broadband project.

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