

Clarifications on the 2016 National Broadband Scheme State aid Decision

Scope of Wholesale Access:

BDUK clarified that wholesale access must be provided to infrastructure in the intervention area that is used to deliver the subsidised network in the intervention area (i.e. in the NGA white areas.) Access to the subsidised network is required in grey areas to the extent that is necessary to enable delivering services in the white area. In practical terms, this will mean access will be provided up to the network access points in the grey area which is nearest to the infrastructure in the white area (e.g. the nearest footway box in the case of duct access).

BDUK's view is that this approach is proportionate, as it preserves the requirement for access, without distorting competition. For instance, a subsidised network may cut across an area that was mapped as grey (e.g. served commercially by Virgin Media). Obliging all of the subsidised network to be offered on an open access basis would enable an access seeker to serve only the grey areas and overbuild the existing commercial deployment.

European Commission DG Comp confirmed that they did not see a problem with the approach above, but that absent other examples, they cannot analyse the full consequences. If there are difficulties in implementation, they would be happy to assist with more specific queries.

Investing in Vectoring Post-Deployment

DG Comp confirmed that vectoring to be added at the cost of the operator without further state aid does not look to cause any problems, subject to the offering a VULA solution functionally equivalent to physical access. The issue of a complainant arguing that the State aid intervention which would have otherwise allowed full physical unbundling would be somehow abusively altered and its purpose changed by adding the vectoring hasn't been raised in the Commission's practice yet.

Impact of Ofcom's Dark Fibre Pricing on bids

DG Comp confirmed that their view is BT propose in their bids their wholesale access prices that would be verified by Ofcom in line with the provisions of the decision for the pricing of new access products – and that could be subject to review upon Ofcom's final decision concerning pricing. This is on the basis that the main role of wholesale access is that it enables third-party operators to compete with the selected bidder particularly when the latter is also present at the retail level. That is why wholesale access should be granted as early as possible before starting the operation of the network, as the Guidelines require. Indeed, footnote 108 refers specifically to the 6 months period to allow the access seeker to compete on an equal footing with the network operator. Enabling an operator to start offering retail services before wholesale access is effectively open to competitors could distort the competition on the very competitive retail market.