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Broadband Delivery UK

National Broadband Scheme for the UK: Supporting the local and community roll-out of superfast broadband

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's vision for broadband for the UK is to ensure the UK has the best superfast broadband network in Europe by 2015. That vision will be delivered through a number of broadband projects due to be rolled out at a local and a community level and led for the most part by local bodies or by communities supported by local bodies.
- 1.2 All of these local broadband projects will be subsidised to varying extents, by funding from the Broadband Delivery UK (BDUK) programme, as well as other UK and potentially EU public sources.
- 1.3 In almost all cases therefore the funding for these local and community broadband projects will give rise to State aid. This is due to the funding from or through State sources, the selective advantage it will give the suppliers appointed to deliver the local and community broadband projects (and other third parties too) and the knock-on effects on the competitive and trading conditions in the EU market place.
- 1.4 Where State aid arises it must usually be notified to the Commission, unless there is an available exemption or an approved aid scheme that can be relied on¹. The National Broadband Scheme for the UK is such an approved aid scheme. 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. Rather than demonstrating to the Commission (through the formal notification process) that its broadband project is compatible with EU State aid rules, the local or community body will do this by demonstrating to BDUK that the National Broadband Scheme criteria are met. BDUK has sought prior approval from the Commission that satisfaction of the scheme criteria is sufficient to demonstrate that aid is compatible with EU State aid rules.² BDUK has also sought the Commission's approval of this guidance document. The national broadband scheme will in effect offer an "umbrella" protection for local and community bodies.

2. Benefits of the national broadband scheme for the UK

¹ Aid schemes are very common, including 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)).

² 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

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- 2.1 Some 40+ local broadband projects are expected to benefit from BDUK programme funding between now and 2015 and potentially beyond to 2017. In addition, the Rural Community Broadband Fund (RCBF), comprising BDUK programme funding and Rural Development Programme for England (RDPE) European Agricultural Fund for Rural Development (EAFRD) funding, is anticipated to be made available to deliver in the region of 100+ community broadband projects. This could necessitate 40+ individual State aid notifications to the Commission as a result.
- 2.2 This would place a significant burden on local and community bodies. BDUK is seeking to minimise that burden by putting in place the national scheme. It would also place a burden on Commission resources. 40+ individual notifications would take up a large amount of the Commission's relatively limited time and resources. This would in turn impact on the timeframe within which local and community bodies could expect a decision from the Commission.
- 2.3 In view of these potential concerns the Commission encouraged the UK to establish a national broadband scheme to cover the funding of these 40+ broadband projects.
- 2.4 The benefits of the national broadband scheme for local and community bodies therefore are:
- No need to submit a formal notification to the Commission;
 - No need to be bound by the timescales of that formal notification process (the Commission may make a decision within two months, although six months is more the norm);
 - Pre-approved scheme tailored to the types of local and community broadband projects likely to benefit from BDUK programme funding or RCBF programme funding;
 - Quicker decisions on whether local and community broadband projects are State aid compliant;
 - State aid support from BDUK as administrator of the national scheme (in liaison with the Department for Business Innovation and Skills' State Aid Branch (BIS SAB) and the Office for Communications (Ofcom).

3. Who the scheme is available to

The national scheme is available to all UK local bodies in receipt of BDUK programme funding. This will include:

- Local authorities (including groups of local authorities) within the UK borders a list of which is available at:
http://www.direct.gov.uk/en/DI1/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG
- Local Enterprise Partnerships established (or to be established) between any of the local authorities within the UK borders referred to above and businesses, a current list of which is available at: <https://www.gov.uk/government/policies/supporting-economic-growth-through-local-enterprise-partnerships-and-enterprise-zones/supporting-pages/local-enterprise-partnerships>
- the Welsh Ministers
- the Scottish Ministers
- Scottish Enterprise
- Highlands and Islands Enterprise
- the Department of Enterprise, Trade and Investment in Northern Ireland.

The national scheme is also available to community bodies in the UK in receipt of funding through the RCBF. This will include:

- Local authorities (see above for list)
- 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. Examples of some CICs are available at: <http://www.bis.gov.uk/cicregulator>
- Charities
- Social enterprises are 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. Further information on social enterprises can be found at: <http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1077475650>
- Groups of non-ISP businesses (e.g. a group of businesses seeking to deliver NGA infrastructure to a business park within which they all located in a rural area)
- Community trusts are 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
- Other formally constituted groups.

As the scheme's title indicates, it is intended to cover local and community broadband projects across the UK, including England, Wales, Scotland and Northern Ireland, provided they satisfy the relevant criteria as outlined above.

4. Eligible projects

4.1 A local broadband project will be covered by the scheme provided it:

4.1.1 seeks to deliver following primary objectives:

- To provide as many homes and businesses in each local authority area in the UK as possible with access to NGA infrastructure capable of delivering superfast broadband speeds (meaning speeds of 30 Mbps or in any event more than 24 Mbps);³ and
- To ensure everyone in the remaining areas in the UK has access to minimum broadband speeds of at least 2 Mbps (the universal service commitment); and

4.1.2 in the areas which the project targets:

- in the case of investment in NGA infrastructure:
 - **"white NGA areas"** meaning areas where: (i) NGA broadband services at an access (download) speed of more than 24 Mbps are not available at affordable prices and there are no private sector plans to deliver such

³ All new projects must target delivery of superfast broadband speeds of 30 Mbps or more, which is in line with the EU's superfast/NGA broadband targets. However, due to earlier UK definitions of superfast referring to speeds of more than 24 Mbps, projects already underway will be satisfying the superfast broadband speed requirement if they seek to deliver speeds of more than 24 Mbps.

services in the next three years; or (ii) there is no NGA broadband infrastructure, nor any private sector investment plans to roll out such infrastructure in the next three years.

- in the case of investment in basic broadband infrastructure:
- "basic white areas" meaning: (i) areas where basic broadband services at a minimum download speed of 2 Mbps are not available at affordable prices⁴ and there are no private sector plans to deliver such services in the next three years; or (ii) areas where there is no basic broadband infrastructure, nor any investment plans by a private sector network operator to deliver such infrastructure within the next three years.

4.1.3 in the case of investment in NGA broadband in areas currently in receipt of basic broadband (speeds of 2 Mbps to 24 Mbps), the project must deliver a 'step change'⁵ in the download speeds currently available.

4.2 A local broadband project will not be covered by the scheme if it targets NGA investment in grey NGA areas or black NGA areas as defined in the Commission's Broadband Guidelines⁶, or if it targets investment in basic broadband in basic grey and black areas.

4.3 A community broadband project will be covered by the aid scheme provided it:

4.3.1 seeks to deliver the following objective:

- To secure NGA infrastructure or NGA infrastructure upgrades capable of delivering superfast broadband speeds (meaning speeds of 30 Mbps or more or in any event more than 24 Mbps) in areas within their community which otherwise would benefit from only the minimum universal service coverage of at least 2 Mbps; and

4.3.2 in the areas which the project targets:

- white NGA areas as defined in paragraph 4.1.2 above; and

4.3.3 in the case of investment in areas currently in receipt of basic broadband (speeds of 2 Mbps to 30 Mbps), the project must deliver a 'step change' in the download speeds currently available.

4.4 As mentioned in paragraphs 4.1.3 and 4.3.3 above, step change is referenced in the Commission Decision letter for the National Broadband Scheme. The purpose of the requirement is to ensure that use of public subsidy is well justified

4.5 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. However the Commission Decision Letter provides an example of a "step change" would include an upgrade from ADSL to FTTC network.

⁴ BDUK is working at present on the basis that access to basic broadband infrastructure is not affordable if the installation cost is £100+ and/or the rental price is £25+.

⁵ See paragraph 41&42 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

⁶ 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>

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