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Broadband Delivery UK (BDUK)

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

State Aid Guidance: Public Consultation

1. What is a public consultation?

1.1 In this context, a public consultation is an online consultation to allow interested stakeholders (e.g. existing or potential national and local network providers, internet service providers, businesses, residents, etc) an opportunity to comment (with respect to broadband related matters) on the areas a local body intends to target with its local broadband project.

2. Why is a public consultation needed?

2.1 The European Commission's Broadband Guidelines require that a local body undertakes a thorough consultation exercise to test and ensure transparency of its target areas. This is, therefore, a mandatory requirement of the National Broadband Scheme for the UK.

2.2 The public consultation tests the results of a local body's detailed mapping exercise (**see separate guidance - State Aid Guidance: Mapping**), i.e. its definition of target basic white and/or white NGA areas. This is to ensure that the aid is being targeted at the right areas for the right reasons, and that there are no credible investment plans for similar/comparable projects now or in the near future (i.e. in the next three years) that overlap with a local body's proposals.

2.3 For Local Bodies utilising the BDUK Broadband Delivery Framework, the pre-procurement supplier engagement process has been designed to take account of the timescales and process required to support those bodies in undertaking a State aid compliant public consultation. A Local Body that is running its own independent procurement should take great care to ensure that its public consultation is undertaken in a manner that meets the requirements set out within this document.

3. What should a public consultation document contain?

- 3.1 As set out within the BDUK State Aid Notification and endorsed via feedback from the Commission, a public consultation document must contain:
 - 3.1.1 a description of the proposed aid measure, e.g. project objective, scope of project, funding involved;
 - 3.1.2 a description of the targeted areas (based on the BDUK baseline mapping data and further mapping exercise undertaken by the local body at a local level);
 - 3.1.3 any opinions already lodged by stakeholders; and
 - 3.1.4 information on how to respond.
- 3.2 Local bodies may choose to include additional information, going beyond the Commission's minimum requirements, e.g. information on known current or future demand stimulation activities, information on the ongoing or future project tender process, how the project aligns with EU or UK broadband policy, initial views on how the project satisfies EU State aid requirements and/or the proposed requirements of the BDUK umbrella aid scheme. The provision of such additional information is at the discretion of the individual local body.
4. **Is there a public consultation template?**
 - 4.1 There is no European Commission template, nor has BDUK prepared a template. However, BDUK has provided input into public consultation documents prepared and published by local bodies. For Phase 2 procurements we would suggest that Northamptonshire document represents good practice. These and other public consultation documents can be found on DCMS' website: Progress with Local Body Projects and BDUK are available to provide advice to Local Bodies on the content of their consultation documents if required.
5. **When should a public consultation be held?**
 - 5.1 It should be held once a local body's detailed mapping exercise is complete following the assimilation of data received from the Open Market Review and can be held at any time after that.
 - 5.2 However, if a local body wishes to be able to rely on the results of the public consultation (i.e. to firm up its mapping that then forms the basis of its project that is put out to tender), it must hold that consultation as close to the start of its tender process as possible. This is to ensure that the mapping is as representative as possible. This means that the public consultation must not close more than one month before the start of the tender process¹ to identify a supplier to deliver its broadband project.
 - 5.3 If a period of more than one month is allowed to elapse between the close of the public consultation and the start of the tender process, the local body may be

¹ The start of the tender process is the issue of an Invitation to tender to suppliers on the Broadband Delivery Framework where a local body wishes to rely on that framework. If a local body decides to run a standalone tender process then the Commission have advised that this is the issue of 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.

required to take additional steps as appropriate to assure itself that the classification of the target areas remains accurate which may involve the updating and republishing the proposed intervention area. No additional steps will be required however if there is good reason why a longer period has elapsed (e.g. 1 - 2 months was needed to prepare the tender documentation following the close of the public consultation prior to the start of the tender process). If a period of more than one month could elapse between close of the public consultation and the start of the local body's tender process, the local body should contact BDUK for guidance:

stateaidforbroadband@culture.gsi.gov.uk

6. How long should the public consultation run for?

- 6.1 The public consultation must itself be open for feedback from all interested stakeholders for at least one calendar month
- 6.2 It is important to make clear in the public consultation document the deadline for responses. This allows certainty for the local body and for the market in terms of understanding when the local body intends to "draw a line " in terms of defining its target areas.

7. Where should it be published?

- 7.1 The consultation document must be published on a readily accessible website. In the first instance, this means publication on the local body's website.
- 7.2 BDUK will also signpost public consultations (open and closed) from its website (see 8 below).

8. Do I need to let BDUK know I am holding a public consultation?

- 8.1 Yes. 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.
- 8.2 BDUK will publish a link to a local body's public consultation on the dedicated State aid section of its webpage at: Progress with Local Body Projects

9. Can I speak to suppliers during the public consultation period?

- 9.1 Yes, although ideally approaches to existing broadband network providers should be made prior to the public consultation via the Open Market Review, so that any feedback can be factored into the overall mapping of the target areas. In the event that this proves challenging, the approaches can be made at the same time as the public consultation.

9.2 In any event, local bodies must seek direct feedback from existing network providers (e.g. BT, Virgin Media, other local network operators, etc) on their infrastructure plans for the next three years.²

9.3 Correspondence from any providers, if such correspondence is received, should then be submitted to BDUK in the course of the local body's application for BDUK funding and State aid approval.

10. What should I do with the responses received?

10.1 If any meaningful comments are made by stakeholders in response to the public consultation, they must be investigated by the local or community body. Evidence may be sought from network providers as appropriate to confirm whether their investment plans are plausible. Such evidence may include: business plans, detailed calendar deployment plans, proof of adequate financing and any other type of evidence to establish the planned investment is credible. In the event of any disagreement with a network provider, the local body should inform BDUK who will seek to resolve the matter as part of its role as scheme administrator.

10.2 In the assessment of network providers submissions where these claim NGA coverage, this should be assessed with reference to BDUK's Technology Guidelines and also with reference to the Broadband Guidelines 2013³.

10.3 We also recommend that a local body communicates the outcome of its assessment of any submissions received with both stakeholders and network providers together with the rationale for the conclusions drawn and how this has been accounted for within its plans.

10.4 The local body is not required to take into account any investment plans announced by network providers following the start of the tender process, save where the local body wishes to do so and subject to being able to accommodate this within the ongoing tender process.

11. What if I don't get a response from suppliers in my area?

11.1 BDUK is aware that there are local bodies who have already issued their consultation documents and failed to receive a response to these. How this is dealt with will depend on the circumstances.

11.2 If a supplier does not respond and the local body is aware that the supplier has infrastructure in its area or may have investment plans in the coming three years that may affect its area, the local body should contact the supplier directly in writing. If the

² Local bodies may require providers who indicate they intend to invest in the relevant areas in the next three years to prove that "at least significant progress in terms of coverage will be made within the three-year period, with completion of the planned investment foreseen within a reasonable timeframe thereafter (depending on the specificities of each area and of each project)". In particular, local bodies may require providers 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. (Broadband Guidelines, paragraphs 63-65) At present BDUK does not anticipate any other information being required of providers to demonstrate concrete investment plans beyond that signposted in the Broadband Guidelines. However, this is something BDUK will keep under review. As any other potential relevant information is identified, BDUK may update this guidance document.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236341/NGA_Technology_Guidelines_300813.pdf

supplier is still not forthcoming, the local body should seek advice from BDUK: stateaidforbroadband@culture.gsi.gov.uk

- 11.3 If a supplier does not respond and, to the best of a local body's knowledge, the supplier has no infrastructure nor relevant investment plans in its area, the local body should write to the supplier and inform them that due to no response they have drawn a line under its public consultation and has firmed up its mapping for its tender process on the assumption that the supplier has no qualifying coverage or plans (see 5 above).
- 11.4 If however some time will pass between the end of the public consultation and the start of the tender process, BDUK's advice to local bodies is to keep its public consultation open until nearer to the start of its tender process. This further window may enable a response from the supplier. Again, if no response is forthcoming, the local body should consider whether to take the steps indicated under 11.2 or 11.3 above.
12. **What if a supplier's investment plans change during my tender process or project roll-out?**
- 12.1 Provided the appropriate mapping and public consultation has been undertaken (see separate **State Aid Guidance: Mapping** and above), local bodies can rely on these results to define their target areas and set the scope of their local broadband project. A local body should be able to rely on the results to form the basis of its tender process.
- 12.2 Moreover, if a local broadband project is at the outset compatible with the umbrella State aid scheme, that project will continue to be covered by the aid scheme even if the market subsequently announces upgrades/roll-out in the relevant target areas. The purpose of this approach is to afford certainty to local bodies and suppliers alike (both those who participate in a tender process and those who are ultimately successful) that their broadband projects remain compatible with community law, even against a potentially changing market landscape.
- 12.3 Notwithstanding the above, in the event that new commercial provision is notified to a local body during the course of its rollout, BDUK recommends that an assessment is carried to establish whether this is qualifying coverage and if so whether the areas where this will provide coverage can be accommodated subject to achieving a best value outcome in respect of the public sector funding.
13. **Does the requirement to hold a public consultation also apply to other projects seeking to procure a broadband project?**
- 13.1 Yes, all bodies seeking to deliver broadband projects will also be expected to hold a public consultation as described above and are encouraged to work in partnership with their Local Body when developing their consultation document. Other bodies are encouraged but not required to consult existing network providers directly as set out in 9 above.