

Hampshire Superfast Broadband Programme:

New Procurement to further extend coverage of Better Broadband across Hampshire:

STATE AID PUBLIC CONSULTATION (2)

1. Introduction

The Hampshire Superfast Broadband Programme is working to extend coverage of superfast broadband beyond the reach of commercially-funded deployments.

Hampshire conducted its first State Aid public consultation on Broadband in September 2012, which revealed that the then current and planned (next 3 years) coverage of better broadband would reach 80% of premises, leaving almost 20% of premises without access to better broadband.

The County Council subsequently completed a procurement under the BDUK Rural Broadband Programme Procurement Framework and awarded a contract to BT in March 2013 to extend superfast broadband to over 59,000 premises by the end of 2015, together with a Universal Service Commitment of at least 2Mbps for any premises not getting the higher-speeds enabled by the investment in fibre-based broadband.

In the 2013 Spending Review, the Government announced a further allocation of funding for broadband under the BDUK Superfast Extension Programme, with the aim of increasing coverage across the UK to 95% by 2017. In order to deploy this additional funding, we intend to conduct a further mini-competition under the BDUK Rural Broadband Programme Procurement Framework to award a second Local Call-off Contract to a supplier to deploy the extended coverage.

As part of this new procurement process, we conducted an Open Market Review in March and April 2014 to establish current and planned (next 3 years) commercial coverage of broadband services in Hampshire by all existing, and any prospective, broadband infrastructure providers. We have now used the information gathered as part of the Open Market Review to define the Intervention Areas to be targeted by the new contract. The purpose of this document is to set-out our State Aid public consultation on our proposed Intervention Areas. The State Aid public consultation will be open until 10th July 2014.

Once we have completed the State Aid public consultation and finalised our Intervention Areas, we will be issuing an Invitation to Tender (ITT) to Framework Suppliers to bid for the opportunity to fulfil a new contract to deliver the extended coverage. We aim to issue the ITT in July 2014, and expect to complete the procurement during the summer of 2014, and for the extended deployment of infrastructure to begin in late 2015 (in parallel with the on-going deployment under the existing contract with BT).

2. State Aid Framework

Please note: this section provides a brief introduction to the State Aid Framework for the purpose of informing responses to this State Aid public consultation. Parties may wish to obtain their own professional/legal advice on the application of the State Aid Framework to this consultation.

The European Union State Aid rules are designed to ensure that any use of public funding ('State Aid') is targeted at market failures and ensuring positive market outcomes (more/faster broadband coverage, reducing the 'digital divide'), while minimising any distortions of competition.

The State Aid rules require public interventions to be targeted so as to limit the risk of crowding-out or disincentivising existing and/or credible planned private sector investments that would otherwise meet the desired policy objectives. In the context of broadband, the State Aid rules require using public funding only to extend broadband coverage in geographic areas where there is no economic incentive for commercial operators to invest to the extent required to achieve rapid deployment of high-speed broadband services that are capable of meeting current and future demands.

The 'EU Guidelines for the application of State Aid rules in relation to the rapid deployment of broadband networks (2013/C 25/01)' can be found at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0930\(02\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0930(02):EN:NOT)

Planned public interventions can seek clearance under the State Aid rules directly from the European Commission (EC), or (as is the case with this proposal) seek clearance under a national scheme pre-approved by the EC. The EC's State Aid decision on the 'National Broadband Scheme for the UK (C(2012) 8223' can be found at:

http://ec.europa.eu/competition/state_aid/cases/243212/243212_1387832_172_1.pdf

State Aid compliance with the National Broadband Scheme for the UK is the responsibility of the National Competency Centre (NCC), part of Broadband Delivery UK (BDUK) within the Department for Culture, Media and Sport (DCMS).

The EC State Aid Guidelines distinguish between two types of broadband networks: Basic Broadband, and Next Generation Access (NGA) networks.

Basic Broadband networks are generally those based on currently widely-deployed technologies such as fixed wired telephony networks (using ADSL/ADSL+ technologies), non-enhanced cable TV networks (eg DOCSIS 2.0), mobile networks (2G/3G (UMTS)), fixed wireless access (FWA) networks, and satellite networks.

NGA networks rely wholly or partly on optical elements (optical fibre) and are capable of delivering an enhanced broadband capability compared to existing Basic Broadband networks.

The EC Guidelines recognise that certain advanced wireless technologies (eg LTE-Advanced) can have similar characteristics to wired NGA technologies, where these are capable of delivering reliable high speeds per customer.

Further guidance on the characteristics for qualifying NGA technologies is available from the BDUK NCC at:

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

The EC Decision on the National Broadband Scheme for the UK requires that public funding granted under the scheme shall ensure a 'step change' in broadband capability, and this is demonstrated by:

- significant new investments in the broadband network;
- the new infrastructure brings significant new capabilities to the market in terms of broadband service availability, capacity and speeds (on average across the Intervention Area, doubling existing speeds);
- the subsidised network should be pro-competitive, ie allow for effective access at different levels of the infrastructure.

The EC Guidelines also distinguish between geographic areas on the basis of current or planned (next 3 years) broadband infrastructures thus:

- 'White' areas are those in which there is no qualifying broadband infrastructure and none is likely to be developed in the near future;
- 'Grey' areas are those where one network operator has a qualifying presence and another qualifying network is unlikely to be developed in the near future; and
- 'Black' areas are those where there are, or there will be in the near future, at least two qualifying network operators.

This geographic mapping of White/Grey/Black areas is to be carried-out separately in relation to Basic Broadband and NGA networks.

In accordance with the EC Decision on the National Broadband Scheme for the UK, we have defined our NGA and Basic Broadband Intervention Areas to target NGA 'White' areas and Basic Broadband 'White' areas, respectively.

3. Open Market Review

We issued an 'Open Market Review – Request for Information' on 21st February 2014 to gather information on existing and planned (next 3 years) broadband deployments to help us to define our Intervention Areas in which we plan to deploy the additional public funding we have secured to further extend broadband coverage across Hampshire.

The Open Market Review is a precursor to the formal State Aid public consultation on our proposed Intervention Areas. The Open Market Review process is not a specific requirement of the EC Guidelines, but is regarded as good practise to help to inform the definition of the Intervention Areas prior to a State Aid public consultation (which is a requirement of the EC Guidelines).

This Request for Information was sent to all known broadband infrastructure providers in Hampshire (including those providers that currently operate broadband infrastructure, and any providers who

have previously registered a potential interest in investing in broadband infrastructure, in the county). We also published the OMR Request for Information on our website at:

<http://www.hants.gov.uk/broadband/openmarketreview.htm> We also met with broadband infrastructure providers during the Open Market Review process to describe the process and to answer any questions.

The Open Market Review process has also taken account of the actual and planned extension of broadband coverage being delivered under the contract with BT to extend coverage to 90% of Hampshire premises by the end of 2015.

We have now concluded the Open Market Review process, and defined the Intervention Areas in which we plan to deploy additional public funding for State Aid public consultation. The proposed Intervention Areas are based upon responses received to our Open Market Review process, which were able to provide supporting evidence to substantiate existing and/or planned qualifying coverage.

4. State Aid Public Consultation

The EU Guidelines (paragraph 78) and EC State Aid decision on the 'National Broadband Scheme for the UK' (paragraph 40) set-out the requirement to hold a public consultation in order to validate the Intervention Area mapping by allowing all interested stakeholders an opportunity to comment on the planned aid measure.

The purpose of this document is to fulfil those requirements by publishing a description of the proposed aid measure, and seeking feedback from all interested stakeholders.

The proposed NGA and Basic Broadband Intervention Areas are shown in the attached maps.

The attached maps of the NGA and Basic Broadband Intervention Areas rely on the definitions of White, Grey and Black areas, as set-out in the EU Guidelines (and as summarised above). Note that in addition, the proposed NGA Intervention Area includes a number of areas shown as NGA White (coloured as blue areas on the maps) – these areas are planned commercial coverage areas, which have been reported as being 'at risk' of not being completed commercially. We are consulting on including these 'at risk' areas within our proposed NGA Intervention Area to ensure that we could intervene in these areas if commercial coverage of these areas fails to materialise. Before intervening in these 'at risk' areas, we would expect to review robust evidence and justification of why it was not commercially-viable to complete coverage of these areas.

This State Aid public consultation and the proposed NGA and Basic Broadband Intervention Area maps are available on our website at: <http://www3.hants.gov.uk/broadband/state-aid-public-consultation.htm>

A link to this State Aid public consultation is also available on the BDUK website at:

<https://docs.google.com/a/digital.cabinet-office.gov.uk/spreadsheet/ccc?key=0Ah3sVRjT82kKdEltXOIJNjNVVWhNbjBnNGwxehHqMHc#gid=0>

We require responses to this consultation not later than 10th July 2014.

5. Responding to this State Aid Public Consultation

The information we are requesting is specified in the following section (Section 6).

When responding to this request, we would be grateful if you could confirm your organisation's name and address, as well as the name, position and contact details of the person responding on behalf of the organisation. We also request confirmation from an authorised signatory that the information provided is suitably accurate and up-to-date.

Please send your responses to: Glenn Peacey, Hampshire County Council, EII Court, The Castle, Winchester, Hampshire, SO23 8UJ or via email to: glenn.peacey@hants.gov.uk

Please note that any information you provide in your response will be treated as commercially confidential to your organisation. However, it may be necessary to share some or all of your response with our professional advisors and/or DCMS/BDUK, Ofcom, the BIS State Aid Branch, and the European Commission, in the course of seeking State Aid approval. We are also subject to certain legal obligations to disclose information in certain other limited circumstances.

It should also be noted that it is a State Aid requirement to utilise the information provided in response to this consultation to refine our State Aid maps to define White/Grey/Black areas for NGA and Basic Broadband. However, the published maps will show the aggregated White/Grey/Black NGA and Basic Broadband areas, not the data provided on a per-operator basis. We will publish the final maps that will be used for procurement purposes shortly after the conclusion of this State Aid public consultation.

If you have any questions about this State Aid public consultation process, please contact Glenn Peacey on 01962 845419 or email: glenn.peacey@hants.gov.uk

6. Information Requested

This section specifies the information you are requested to provide in response to this State Aid public consultation.

We are requesting information on, and supporting evidence for, any current or planned (next 3 years) investment in broadband infrastructure in the county of Hampshire, where these may not already be included within the proposed NGA and Basic Broadband Intervention Area maps attached.

Note: for the avoidance of doubt, if you are content with our proposed State Aid Intervention Areas, no further response is required.

For any current or planned coverage not included within the proposed State Aid Intervention areas shown on the attached maps, we are requesting information on the post codes, and the number of premises within each post code, covered (or planned to be covered) by your broadband infrastructure investment. We are asking for information on coverage of Basic Broadband and NGA coverage separately (to enable us to map the Basic Broadband and NGA White/Grey/Black maps required for State Aid purposes). By 'covered' (or 'passed') we mean that fixed network infrastructure is available to the premises, potentially subject to a final drop connection, or that the

premises are able to receive a suitable quality radio signal over the air interface (in the case of wireless or satellite coverage), potentially subject to the installation of a suitable antenna.

We propose to use the following criteria for determining coverage of Basic Broadband and NGA White/Grey/Black areas, respectively, and we are requesting that you classify the coverage of post codes and premises of your current or planned (next 3 years) broadband infrastructure using the same criteria (where the criteria is applicable to your organisation's broadband infrastructure):

For Basic Broadband, each post code (or partial post code) is turned Grey if:

- BT has upgraded the network infrastructure serving the area AND premises within the post code (or partial post code) have an estimated (VDSL for FTTC) Access Line Speed of >2Mbps AND it is not an 'exchange only' (EO) line OR the premises current ADSL speed is estimated at >2Mbps;
- OR if it is in a Virgin Media area;
- OR it is an area served by an alternative fixed infrastructure provider with Access Line Speeds of >2Mbps;
- OR if a wireless service or other qualifying technology is available at >2Mbps to premises in the post code (or partial post code), and each post code (or partial post code) is turned Black if it satisfies two of these conditions. All other post codes (or partial post codes) remain White.

For NGA, each post code (or partial post code) is turned Grey if:

- BT has upgraded the network infrastructure serving the area AND premises within the post code (or partial post code) have an estimated (VDSL for FTTC) Access Line Speed of >15Mbps AND it is not an 'exchange only' (EO) line OR the premises current ADSL speed is estimated at >15Mbps;
- OR if it is in a Virgin Media area;
- OR if it is an area served by an alternative fibre-based infrastructure provider with Access Line Speed of >15Mbps;
- OR if it is in an area that is served by wireless or other qualifying technology that meets the requirements of the BDUK NGA Technology Guidelines¹;

and each post code (or partial post code) is turned Black if it satisfies two of these conditions. All other post codes (or partial post codes) remain White.

Note that where information is provided at post code level (rather than at a more detailed partial post code level into sub post code areas, which group premises with similar Access Line Speeds together into partial post codes), and where only a single operator has a presence, if any of the premises within the post code do not meet the minimum speed test (>2Mbps for Basic Broadband, >15Mbps for NGA), that post code shall be turned (Basic Broadband or NGA., respectively) White. Where more than one operator has a presence in a post code, the post code is turned White only if the sum of the premises covered by each operator in the post code is less than the total number of

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premises in the post code (otherwise the post code is turned Grey or Black, as appropriate) – this is to avoid the risk of public subsidy over-building existing commercial coverage.

Having due regard for the EC Guidelines (which would enable NGA areas getting less than 30Mbps to be classified as NGA White), and the DCMS policy objective of delivering Superfast Broadband (>24Mbps) (which would similarly enable NGA areas getting less than or equal to 24Mbps to be classified as NGA White), we have set the above speed criteria for NGA White to be less than or equal to 15Mbps. We have set the NGA White speed criteria at this level having regard to the requirement in the EC State Aid Decision that public funding granted under the scheme shall ensure a ‘step change’ in broadband capability (typically provides at least a doubling of average access speeds) – our priority for targeting NGA interventions is to use the available public funding to provide a ‘step change’ in broadband capability for premises currently getting relatively slow broadband speeds (< 15Mbps), rather than using the available funding to provide more marginal increases in broadband capability for premises already getting higher broadband speeds (>15Mbps).

We have also had regard for the current position in the UK retail market, whereby all of the major retail providers are using a threshold of at least 15Mbps for customers ordering a higher speed broadband service designed to support a bundle of broadband, Pay TV and telephony products with a quality of service that ensures a fully satisfactory customer experience. However, we reserve our position in relation to any speed tests that might be used to define future intervention Areas for public funding, which may seek to establish a higher level of minimum NGA speed to fully support current policy objectives (eg DCMS >24Mbps, EU >30Mbps) or future policy objectives.

Any information provided in response to this State Aid public consultation should include, but need not be limited to:

- Detailed maps for NGA and Basic Broadband showing the existing coverage, and separately maps detailing the planned investment in NGA and Basic Broadband for at least the next 3 years.
- Details of premises covered or passed, ie post codes (at 7-digit post code level) and the number of premises by post code, that fixed network infrastructure is available to the premises, potentially subject to a final drop connection, or that the premises are able to receive a suitable quality radio signal over the air interface (in the case of wireless or satellite coverage), potentially subject to the installation of a suitable antenna.
- A detailed description of the technology solution(s) deployed (or to be deployed) in your broadband infrastructure, and where these claim to be NGA, demonstrate how they meet the minimum standards as set-out in the BDUK NGA Technology Guidelines².
- A description of the services/products currently offered, and separately those services/products to be offered within the next 3 years.
- Installation, annual/monthly subscription, and additional volume or per-service tariffs for those services/products (identifying whether such tariffs are inclusive or exclusive of VAT).

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

- Upload and download speeds typically experienced by end-users, and how these may vary by factors such as distance, increased take-up or demand, contention, etc.
- Appropriate indicators of the quality of services (eg contention ratios, bandwidth allocation per user, etc), including any characteristics (eg latency, jitter) that are required to support advanced services such as video conferencing or HD video streaming.
- Evidence to substantiate actual or planned coverage claims, including business cases and evidence of available funding to enable plans to be fulfilled.
- Details and planned timing of roll-out of any future investments, including further investments required to cope with future increases in take-up and demand.

Please supplement the required information above with any supporting evidence as you consider appropriate (eg links to public websites, etc).

7. Next Steps

Based upon any responses received to our State Aid public consultation by the closing date of 10th July 2014, we plan to publish our final Interventions Areas shortly after the close of the consultation period. We then plan to issue an Invitation to Tender (ITT) to Framework Suppliers to bid for the opportunity to fulfill a new contract to deliver the extended coverage.

The expected funding envelope for the next procurement will be up to £9.2m from Hampshire County Council matched by £9.2m from the Department for Culture Media and Sport (DCMS), and it is expected that the procurement will take place as a call off using the current DCMS/BDUK framework.