



BDUK Urban Broadband Fund

Urban Broadband Fund Supplier Consultation

Response from INCA to Supplier Information and Questionnaire

Introduction to INCA's Response

INCA brings together around 500 non-incumbent organisations and groups in the private, public and community sectors promoting and/or delivering next generation broadband infrastructure and services. They are active in both urban and rural environments. Their broad, overall view is that the UK needs to move towards the deployment of new 'transformational digital infrastructures' - fibre and high speed wireless, with capabilities at least as ambitious as those in the EU Digital Agenda. First generation broadband brought about profound changes in the way that most of us work, communicate and are entertained. The UK is a leader in creative services and businesses exploiting the 'digital economy'. INCA's members believe that next generation infrastructure will bring about equally profound changes with the development of completely new, innovative products and services. But these can only be developed and exploited in the UK, if we have the infrastructure that can support them.

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INCA members believe that with the right policy and regulatory conditions more private sector investment into this new infrastructure will be forthcoming, outside of investments by BT and Virgin Media. However, the policy conditions developed for the BDUK Rural Fund effectively precluded competition. INCA fears that the same is about to happen with the relatively small Urban Broadband Fund. The former Secretary of State and many of the first group of cities started out with a high level of ambition for the sort of transformational infrastructure they believe will be necessary for the economic and social well-being of their citizens. Such a small fund was never going to deliver all of these ambitions, but it could be used to kick start additional private investment. It seems however that these big ambitions are being gradually whittled down to a process of FTTC in-fill, wireless concessions and end user vouchers that at best will help get BT's 'fibre on demand' service off the ground. Whilst good for BT (and potentially Virgin Media's leased line business), this will not create the sort of ground-breaking projects we are seeing in urban centres in Europe, North America and Asia.

The core group that has worked on this consultation includes representatives from private sector companies and others with a deep knowledge of public procurement of broadband services.

Urban Broadband Fund Supplier Consultation Questionnaire

1.1 Instructions

- 1.1.1. Thank you for the opportunity to respond to the Supplier Consultation. Please accept this document as the response from the Independent Networks Co-operative Association Ltd.
- 1.1.2. We note your commitment to treat responses as commercial-in-confidence and not to share any information that can be associated with INCA or our members outside of DCMS without our express agreement except where such disclosure is required by law. We also note your intention to share any such information with your professional advisors (including consultants) in connection with the UBF programme on the basis it is treated as commercial-in-confidence. We would also like to add that in such circumstances, we wish any information on our approach to be considered as the Intellectual Property of INCA and not used at all or under any circumstances by your advisors for any purpose outside of direct support of the UBF.
- 1.1.3. Freedom of Information (FOIA): We acknowledge and accept that all information in responses, including personal information, may be subject to publication or disclosure under Freedom of Information legislation.

- 1.1.4. We are happy for DCMS to anonymise our response to inform discussion with the European Commission.
- 1.1.5. We have submitted this electronically on the 18th March 2013, as discussed with yourselves and notified by email, to:
mailto:urbanbroadbandfund@culture.gsi.gov.uk.
- 1.1.6. Please refer any questions or clarifications you have regarding this response to: Malcolm.Corbett@inca.coop

1.2. Organisation Information

- 1.2.1. Name of the organisation or the consortia responding (including a list of organisations represented).

Independent Networks Co-operative Association Ltd

- 1.2.2. Size of organisation or body represented.

INCA brings together around 500 organisations involved in delivering next generation broadband projects in the private, public and community sectors. A list of members and supporters can be supplied on request.

1.3. Programme and commercial principles

- 1.3.1. Would your organisation be interested in bidding for government funding in respect of the projects described in this consultation? Would your organisation be interested in using newly available wholesale services in order to serve your customers? How might the programme and commercial principles set out in this consultation impact positively or negatively on your prospective involvement in the UBF programme?

INCA is a trade association and as such is not interested in bidding for funding under the UBF directly. Some of INCA's members are interested in the UBF assuming that the policy set favours a competitive approach to infrastructure deployment. In general INCA members bring private sector investment to infrastructure deployment and voice considerable concern that state aid will unnecessarily distort the market in favour of the incumbent and existing infrastructure, rather than the deployment of new FTTH and high speed wireless networks.

With Respect to Programme Management Principles (3.2.1)

We concur entirely with principles 1, 3, 4 and 5.

We agree with the intent of principle 2 to mitigate the risk of failure of projects. However, we believe the focus of risk mitigation should be on the best way of achieving the strategic outcomes rather than the 'project'. There are significant examples in the UK already where a focus on the wrong aspects leads to constraints in the approach taken in the name of 'mitigating risk', especially for the local authorities concerned.

One such 'risk mitigation' has led to a constraint in the means public funds can be applied. We believe that exploring the most 'efficient use of public funds' (Principle 5) must include a thorough consideration by cities of the Market Economy Investor Principle (MEIP).

We are very concerned that MEIP is not mentioned let alone considered within the scope of the consultation documentation. **We urge DCMS to engage in considering MEIP and will gladly meet to discuss this further.**

With Respect to Key Commercial Principles- commercial approach (3.3.2)

We support principles 7, 8, 10 (see below), 11 and 12 (see below)

We have the following observations to make regarding these and the other principles:

6- DCMS' assistance in maintaining compliance will be very helpful but only if it enables the full scope of options to be explored. DCMS should only act as a 'facilitator' to encourage cities with common thinking to collaborate.

9- We do not understand the use of 'appropriate' as a principle. The only entities that can define what is appropriate are the city and preferred bidder concerned. We are equally concerned with how 'affordable' has been translated in the UK broadband agenda to date. 'Affordable' should not equate to 'cheap'. The UK has 'enjoyed' some of the cheapest pricing for broadband in Europe- and now has insufficient capital to deploy next-generation infrastructure. Also, the service provider market has stated that it cannot afford 'on-boarding costs' to new networks because there is insufficient margin in their current products. Pricing that reflects the value and opportunity created by the product stimulates innovation. 'Piling high and selling cheap' does not. The UK has suffered too much from the latter.

10- The use of state money as Aid is specifically to distort markets- including adjacent ones where they relate to historic solutions to market needs. Protecting the interests of the leased line market is not a valid consideration in the intervention, as NGA offers better and more cost-effective solutions to the same needs.

11 and 12- Why has MEIP not then been considered? In other European markets, MEIP has demonstrated a long-term highly sustainable approach, which can return money for future investment.

With Respect to Key Commercial Principle- economic considerations (3.3.3)

We support principles 13 and 14 (see below), 15, 17(see below)

We have the following observations to make regarding these and the other principles:

13 and 14- We contend that the maximum impact of BDUK & city investment would be to leverage the maximum amount of private investment for the public intervention. The best incentives for private sector investment are the use of public funds in ways that best fit private operators' business models. Grants for Gap Funding only suit incumbents' business models. Extensive research amongst our non-incumbent supplier members has demonstrated resoundingly that they can leverage significantly more private funding through loans and guarantees.

16- We do not understand the relationship you have described between 'existing, market driven and technology agnostic solutions'. Existing solutions will be technology specific. The decision on the best strategic outcomes should be technology agnostic. We believe this is more of a procurement principle

than an economic one.

17- The timing and impact of take-up risk are significantly different at each stage of the supply chain. We believe that instead of enabling outcomes which address the risks across the supply chain, that interventions specific to each issue along the supply chain will be much more effective. For example, providing loans and guarantees to infrastructure operators and connection vouchers to service providers- once you have assisted SPs with the costs of 'on-boarding' to new networks.

With Respect to Key Commercial Principles- risk transfer (3.4.1)

We support all three principles relating to risk transfer. However, we believe the principles (and therefore potentially the corresponding guidance to cities) is not comprehensive enough.

In particular, there are two principles we believe are not articulated clearly enough:

1. That all parties understand and have a common view of the anticipated returns and corresponding risks related to-
 - A) the establishment and operation of network infrastructure and
 - B) the adoption of the infrastructure by service providers
 - C) the development of services and their take-up by public sector, business and residential users
2. That all parties understand and have a common view of the investment profiles and exit strategies, in order to determine their impact on the commercial risk of the schemes.

In summary, we are concerned that some of the programme and commercial principles set out in this consultation are too restrictive to encourage greater and better competition for ultrafast broadband provision in urban areas. We are also concerned that the scope of funding options described do not best leverage investment for non-incumbent suppliers. We have described some of these concerns in our submissions below under each relevant heading.

We have also made certain suggestions on how we believe the principles could be extended to significantly assist competition, innovation and investment in broadband to meet the European Commission's DAE 2020 targets.

In addition to our response to this consultation, INCA has put forward proposals to DCMS for the development of one of more 'Netco' models outside of the current BDUK framework to enable consortia of businesses to manage project risks appropriately for their own business plans. Our research indicates that this would facilitate a more competitive approach to NGA deployment in some areas.

1.4. Commercial delivery options

1.4.1. For Commercial Model 1: "Public Sector operator of passive asset, supported by private sector operator", please complete the following questions:

- 1.4.1.1. Are you interested in this model and what is your organisation's experience of similar projects?

As stated, INCA is a user and trade association and has no interest in adopting any of the commercial models described.

However, we are aware that some of our members would be interested in a model implementing a network that would remain in public ownership and providing managed services to assist in running it (e.g. a Public sector DBO)

1.4.1.2. How would you encourage wider communication providers and retailers to ensure that end-users receive improvements in connectivity?

State aid can only be invested in entities providing 'Open Access' networks which in the UK context means open at least at the active layer. BT Wholesale provides an EMP platform that links service providers with OpenReach infrastructure. Virgin Media by contrast is vertically integrated. INCA members in general favour open access conditions- even when they themselves are vertically integrated- and have participated in industry/government attempts to create an open access aggregator platform. One currently exists - the platform operated by Fluidata, an INCA member. Another approach taken by City Fibre Holdings is to develop anchor tenancy arrangements with major service providers. Another, ITS, is focusing on public sector anchor tenancy and establishing relationships with relevant service providers.

In either case - aggregator platform or anchor tenancy - engagement with service providers is expected to significantly reduce demand risk of new infrastructure projects since the service providers have primary relationships with end users whether business or domestic. Proposals to create a voucher scheme as a demand side measure will have to take into account the need to guarantee service provision over multiple infrastructures and support one or both models,, otherwise the only beneficiaries will be BT and/or Virgin Media using state aid to incrementally upgrade infrastructure for a very limited number of business users.

1.4.1.3. To what extent and how would restrictions on operating as a communication provider and/or retailer affect your business / commercial case?

Most non-incumbent providers are not vertically integrated and hence there would be no impact on their commercial cases.

However, some have developed models that rely on 'early exclusivity' of retail relationships to protect the market whilst demand is being stimulated, as a means of avoiding the use of state aid. We believe that DCMS should focus on requiring open access where state aid is present, rather than insisting on functional separation.

1.4.1.4. To what extent and how would restrictions or obligations on State aid affect your business / commercial case?

Our members actively welcome state aid conditions and obligations where public funds are used as aid. In particular:

- the obligation for open access, which should drive network utilisation and hence underpin a business plan that needs state aid
- the re-use of infrastructure as this places an obligation on existing operators to behave 'fairly' especially where they have Significant Market Presence.
- also, re-use helps authorities justify offering their existing infrastructure for new schemes. We understand that existing providers have implied this is not permitted, presumably on the grounds that such infrastructure is of little or no use to them. However, it can be of significant value to the business case for a new network from another supplier.

1.4.1.5. List any other key assumptions, dependencies or risks that DCMS should consider.

1.4.2. For Commercial Model 2: "Deploy and operate passive infrastructure", please complete the following questions:

1.4.2.1. Are you interested in this model and what is your organisation's experience of similar projects?

As stated, INCA is a user and trade association and has no interest in adopting any of the commercial models described.

We are aware that many of our members would be interested in a model implementing and running a passive layer network (e.g. a Private sector DBO), however, most would prefer also to be involved in the active layer (model 3).

Our members may adopt a consortium approach to delivering this model. This may take the form of an AssetCo, where each provider delivers the passive components they have expertise in- and also invests in a legal 'holding company' for the asset. This enables aggregation and fair apportionment of risk- a major factor that prevented non-incumbents for successfully bidding for the rural pilots and the BDUK Framework.

1.4.2.2. How would you encourage wider communication providers and retailers to ensure that end-users receive improvements in connectivity?

State aid can only be invested in entities providing 'Open Access' networks which in the UK context means open at least at the active layer. BT Wholesale provides an EMP platform that links service providers with OpenReach infrastructure. Virgin Media by contrast is vertically integrated. INCA members in general favour open access conditions- even when they themselves are vertically integrated- and have participated in industry/government attempts to create an open access

aggregator platform. One currently exists - the platform operated by Fluidata, an INCA member. Another approach taken by City Fibre Holdings is to develop anchor tenancy arrangements with major service providers. Another, ITS, is focusing on public sector anchor tenancy and establishing relationships with relevant service providers.

In either case - aggregator platform or anchor tenancy - engagement with service providers is expected to significantly reduce demand risk of new infrastructure projects since the service providers have primary relationships with end users whether business or domestic. Proposals to create a voucher scheme as a demand side measure will have to take into account the need to guarantee service provision over multiple infrastructures and support one or both models,, otherwise the only beneficiaries will be BT and/or Virgin Media using state aid to incrementally upgrade infrastructure for a very limited number of business users.

In this model, the ability to encourage use is significantly reduced as the risk and return is passed to the active layer provider, presumably the wholesale provider described on your diagram.

1.4.2.3. To what extent and how would restrictions on operating as a communication provider and/or retailer affect your business / commercial case?

1.4.2.4. To what extent and how would restrictions or obligations on State aid affect your business / commercial case? Particularly views are sought on part 4.3.6 of the UBF Supplier Consultation.

Our members actively welcome state aid conditions and obligations where public funds are used as aid. In particular:

- the obligation for open access, which should drive network utilisation and hence underpin a business plan that needs state aid
- the re-use of infrastructure as this places an obligation on existing operators to behave 'fairly' especially where they have Significant Market Presence.
- also, re-use helps authorities justify offering their existing infrastructure for new schemes. We believe that existing providers have implied this is not permitted, presumably on the grounds that such infrastructure is of little or no use to them. However, it can be of significant value to the business case for a new network from another supplier.

With specific regard to 4.3.5, our members would be willing to consider providing access to the network for any use where the network is subsidised including offering dark fibre or use for mobile backhaul.

With regard to 4.3.6, we believe that any business case can only be strengthened by greater use of the network- provided the rates are competitively set and not regulated against other, historic markets. We would therefore strongly object to any conditions that require a pricing regime to protect a historic market such as leased lines, for the following reasons:

- Historic products such as leased lines were developed to meet a market need that could not

be satisfied in any other way. If technology now enables a better and more cost-effective way, setting conditions based on the 'old products' serves no fruitful purpose other than the anti-competitive protection of that market and the restriction of innovation.

- If suppliers of historic products believe there is still market demand for them, then they have two options- continue to provide them at a competitive price using the existing infrastructure and hence prove they still demonstrate value to the customer, or use the new open access infrastructure themselves for the products to provide a more competitive price.

1.4.2.5. List any other key assumptions, dependencies or risks that DCMS should consider.

1.4.3. **For Commercial Model 3: "Deploy and operate passive and active infrastructure", please complete the following questions:**

1.4.3.1. Are you interested in this model and what is your organisation's experience of similar projects?

As stated, INCA is a user and trade association and has no interest in adopting any of the commercial models described.

However, we are aware that the majority of our members would be interested in a model implementing and running a network (e.g. a Private sector DBO), that includes the active layer.

Many of our members would adopt a consortium approach to delivering this model. This may take the form of a NetCo, where each provider delivers the components they have expertise in- and also invests in a legal 'holding company' for the assets and active service provision. This enables aggregation and fair apportionment of risk- a major factor that prevented non-incumbents for successfully bidding for the rural pilots and the BDUK Framework.

1.4.3.2. How would you encourage wider communication providers and retailers to ensure that end-users receive improvements in connectivity?

State aid can only be invested in entities providing 'Open Access' networks which in the UK context means open at least at the active layer. BT Wholesale provides an EMP platform that links service providers with OpenReach infrastructure. Virgin Media by contrast is vertically integrated. INCA members in general favour open access conditions- even when they themselves are vertically integrated- and have participated in industry/government attempts to create an open access aggregator platform. One currently exists - the platform operated by Fluidata, an INCA member. Another approach taken by City Fibre Holdings is to develop anchor tenancy arrangements with major service providers. Another, ITS, is focusing on public sector anchor tenancy and establishing relationships with relevant service providers.

In either case - aggregator platform or anchor tenancy - engagement with service providers is expected to significantly reduce demand risk of new infrastructure projects since the service providers have primary relationships with end users whether business or domestic. Proposals to create a voucher scheme as a demand side measure will have to take into account the need to guarantee service provision over multiple infrastructures and support one or both models,, otherwise the only beneficiaries will be BT and/or Virgin Media using state aid to incrementally upgrade infrastructure for a very limited number of business users.

In this model, the provider has full control on encouraging use. However, they should also be given the means to operate directly at retail level themselves, should market stimulation be required. Appropriate restrictions would be accepted (see 3.c below).

1.4.3.3. To what extent and how would restrictions on operating as a communication provider and/or retailer affect your business / commercial case?

Our members would support necessary conditions to ensure open access and 'fair use' in situations where state aid (n.b. not public funds) are employed as in bullets 1 and 2 of paragraph 4.4.5. However, bullet 3 is considered unfair unless exactly the same conditions were applied to existing operators, particularly those with SMP. To not make this obligatory would constitute an unfair restriction on market entrants.

1.4.3.4. To what extent and how would restrictions or obligations on State aid affect your business / commercial case? Particularly views are sought on part 4.4.7 of the UBF Supplier Consultation.

Our members actively welcome state aid conditions and obligations where public funds are used as aid. In particular:

- the obligation for open access, which should drive network utilisation and hence underpin a business plan that needs state aid
- the re-use of infrastructure as this places an obligation on existing operators to behave 'fairly' especially where they have Significant Market Power.
- also, re-use helps authorities justify offering their existing infrastructure for new schemes. We believe that existing providers have implied this is not permitted, presumably on the grounds that such infrastructure is of little or no use to them. However, it can be of significant value to the business case for a new network from another supplier.

With specific regard to 4.4.6, our members would be willing to consider providing access to the network for any use where the network is subsidised including offering dark fibre or use for mobile backhaul.

With regard to 4.4.7, we believe that any business case can only be strengthened by greater use of the network- provided the rates are competitively set and not regulated against other, historic markets. We would therefore strongly object to any conditions that require a pricing regime to protect a historic market such as leased lines, for the following reasons:

- Historic products such as leased lines were developed to meet a market need that could not be satisfied in any other way. If technology now enables a better and more cost-effective way,

setting conditions based on the 'old products' serves no fruitful purpose other than the anti-competitive protection of that market and the restriction of innovation.

- If suppliers of historic products believe there is still market demand for them, then they have two options- continue to provide them at a competitive price using the existing infrastructure and hence prove they still demonstrate value to the customer, or use the new open access infrastructure themselves for the products to provide a more competitive price.

1.4.3.5. List any other key assumptions, dependencies or risks that DCMS should consider.

1.5. Funding models

1.5.1. Which funding models most appropriately fit your organisation's view of providing services and why?

Our members would support Options 2, 3 and 4- all of which may adopt variants as described under Option 5. Option 1 is not preferred by non-incumbent operators.

Option 2: Joint Venture. Our members are entrepreneurial and flexible enough to establish effective joint ventures. These may be completely separate local entities, in which the authority would invest alongside private sector partners. Alternatively, the private sector investment in the local entity could be from a NetCo owned by the private sector operators and investing partners. This approach allows each authority to be clear about what their investment is in and what it is delivering, whilst at the same time enabling the providers and other institutional investors to manage the risk and returns over a wider equity/ asset base. This approach is described in the Oxera Report for Vodafone and CityFibre and the Ventura Report to the FFTH Council Europe received by the European Commission in December 2012.

Option 3: Public sector guarantee of demand. Our members would be open to any variant of 'guarantee', for example time-limited shares with purchase obligations as mentioned, or 'availability payments' as described in the Ventura report. We also believe that more awareness and use of the Infrastructure Guarantee Scheme run by HM Treasury is needed.

Option 4: Fully state owned broadband network. As providers of specific network components and services, our members would be prepared to contract for the ongoing support and operation of the network in addition to the design, development and deployment.

Option 1: Gap Funding. The gap funding model tends to favour the incumbent, because of their existing customer base (built in revenue stream) and network spread (potentially lower costs of deployment). In particular:

- a) A fundamental requirement is to have clear visibility/ certainty within the business plan of what the 'gap' is. As significant factors include the revenues that can be achieved over the network and the cost of build in the city, an existing operator has a distinct advantage in any procurement.
- b) Further, the existence and capability of existing infrastructure significantly reduces the 'gap' for an existing operator, thus placing a new entrant at a further disadvantage.
- c) Finally, new operators will be funding the network through new investors. These investors exercise significant reluctance to support schemes that receive grants. They do however understand the benefit of equity financing (as under Option 2) or debt financing such as loans or guarantees (as may be applied under Options 2 or 3).

However, Option 1 could be workable if the procuring authority could offer some form of anchor tenancy, which would provide a guaranteed minimum revenue stream.

Option 5: Anchor Tenancy. The means of securing anchor revenue can be applied to any of the above

options. This would typically be anchor tenancy from service providers or the public sector. In the case of both, it is sometimes suggested that offering anchor tenancy could run counter to State aid or procurement regulations. However, we believe that this would not be the case if the anchor tenancy was offered to all potential suppliers as part of an open procurement process.

Additionally in the case of the latter, it is sometimes suggested that an authority cannot combine the procurement of NGA and public sector networks. However, there is precedent that public sector traffic at IL0 can be conveyed over a network as built- and that IL1 and above could be conveyed with the appropriate security measures in place. On this basis, public sector services could be offered under a separate Lot in a procurement for NGA by an authority with the right to award this Lot if a proposition proved attractive/ Best Value.

DCMS is asked to give its opinion on anchor tenancy, in order to provide some guidance to the industry..

1.5.2. What barriers are there to your organisation achieving a long term sustainable business model (minimum of 10 years)?

Our belief is that any responsible network operator will:

- utilise a technology platform at the outset that offers the longest economic life through capacity, capability and upgrade potential,
- balance the above by the ability of the technology to enable attractive wholesale prices that stimulate demand to be viable within the business case
- include within the long term business plan the costs of network upgrade to meet increased demand and capability.

There is overwhelming global evidence showing that operators who behave responsibly in this fashion deliver significant returns to GDP, way in excess of 'sustainability'.

The critical period in the life of any infrastructure is the early period. We believe that by adopting any of our preferred approaches above, evidence from our members' models shows that a stable business can be achieved in 3-5 years for any metropolitan broadband scheme. Following the initial period, the investor profile would transition from 'project capital' investment to lower interest Infrastructure Funds. On this basis, sustainability can be assured well within 10 years.

In terms of barriers, our members feel there is unnecessary risk placed on private sector business models for new NGA infrastructure from:

- a) ineffective regulation and pricing of shared infrastructure (PIA)
- b) Biased taxation on the implementation of new fibre and ducts
- c) A lack of clear and detailed understanding in local and central government on how the transaction chain works in the telecoms industry (particularly broadband and associated services/ content)
- d) Confused definitions of market failure as a result of c), leading to less effective or insufficiently focused interventions
- e) In particular, insufficient attention to interventions that enable service providers to access new networks on competitive terms to existing networks. In our opinion, this was a major factor in the lack of competition delivered through the rural interventions and remains a real risk for urban

also.

While our members have to take these factors into account in their business strategies and investment profiles, the sustainability of their models is sub-optimal. However, we are certain that if DCMS focused its efforts on removing/ mitigating these hurdles, many new operators could succeed in the market and the UK would achieve the DAE2020 targets.

1.5.3. Where the funding model requires the supplier to provide an up-front investment, how would you propose to fund such investment? What conditions are you/your investor likely to require (eg requirements for sharing risk/reward)?

Our members have succeeded in attracting interest from a significant number of sources, including:

- Equity Financing- from project capital funds, private wealth investors, venture capital funds etc both in the UK and overseas. There has also been significant interest from Infrastructure Funds for the mature stages in the infrastructure's life.
- Debt Financing: as loans and guarantees often offset against anchor tenancy as described above.

However, the common concern is a requirement to see more regulatory and government policy 'certainty' and clarity in the interventions proposed, that show no bias towards existing operators (as this provides a clear disincentive to invest in the UK market). We are confident from overseas evidence and precedents, along with discussions with the investor markets, that at least a 3:1 ratio of investment could be expected against any public funds applied- provided that clear indications are given that the UK is 'open for new business'.

1.6. Procurement delivery models

1.6.1. Which of the procurement options identified are favoured by your organisation and why, and which may adversely impact on your ability to compete and why?

We strongly favour Options 1 and 4. We do not support Option 3 in any event and have significant reservations regarding Option 2.

We believe that **Options 1 and 4** will deliver Best Value in meeting the DAE 2020 targets, in terms of:

- procurement timescales and cost
- solutions proposed, implementation timescales and value for money in the resulting active and passive infrastructures

Our reasons for this belief are as follows.

In our experience, every city has noticeable variants in its 'ecosystem' and will have different priorities in its economic and social development plans. Similarly, there are significant differences in the 'risk appetite' and capabilities of each city to adopt commercial structures with the private sector. These have a material affect in the best procurement approach and outcome.

A single co-ordinated procurement is very likely to lead to a 'normalising' of these aspects in order to accommodate all cities. This would inevitably lead to a procurement approach that would focus towards the 'lowest common denominator' in terms of risk and commercial capability. The only way to avoid

this in a single co-ordinated procurement would be to again establish a Framework and run further competitions from it for each city, that would accommodate these variances. However, this would require the further competitions to be so detailed as to potentially overcome savings in time and cost of establishing the framework in the first place. We therefore do not advocate Option 3 in any event.

Regarding Option 2, we would value DCMS' involvement as a facilitator and enabler of shared learning and experience and provider of 'best practice' telecoms industry guidance as suggested at paragraph 6.4.2. This is in line with our response above to principle 6 at 3.3.2. Guidance and the use of consistent templates etc would greatly assist in Options 1 and 4.

However, we believe that acting as a convenor or 'gateway' to stagger procurements as suggested at paragraph 6.4.3 is extremely unhelpful. It assumes there is limited scope within the industry to respond and deliver the requirements. This may be true if there is a limited amount of resource available through existing operators only. As discussed previously, our members confirm that they have significant untapped investment, capability and innovative solutions.

Coordinating and staggering a pipeline of city projects will waste DCMS resources that should instead be deployed on removing the barriers to entry for new operators as described in our response to 1.5.2. In this way, DCMS would not constrain market opportunity but enable it.

In Option 4, we would advocate a role for DCMS in helping to identify and encourage cities that have similar intended outcomes, risk and commercial appetite etc to 'collaborate' in a number of smaller number of procurements, each of which focuses on various approaches. Each collaborating city's specific requirements would be defined within a Lot under the most relevant procurement. In this way:

- procurement costs would be minimised for all parties
- the range of solution options would be kept open as wide as possible
- the potential for cost and value aggregation can also be explored effectively

Competitive Dialogue

With regard to the last point, we wish to express a concern, which has already been raised at the open market day. We do not believe sufficient consideration and guidance is being given on the use of Competitive Dialogue.

The entire principle of CD as defined within EU procurement principles is to allow the purchaser the ability to explore a number of different approaches and solutions to meet their intended outcomes. It has been used highly successfully across a number of markets, some of which display similar characteristics to the composition of NGA broadband provision. However, the current thinking seems to limit its use to 'structured negotiation' prior to requesting best and final offers.

We strongly recommend the use of CD to explore various approaches in parallel, in order to offer cities the greatest opportunity to determine those that offer Best Value against their intended outcomes. For example, a city wishing to invest its own funding (as well as that from the UBF) might wish to consider more than one of the commercial models outlined in this consultation- or a variant of them. It may also wish to consider whether the funds are best applied as a loan, guarantee or grant. This is entirely possible using CD and precedents exist.

There is an argument that this creates a long-drawn out procurement process which might outweigh the best value benefits derived. We disagree with this hypothesis for three principle reasons:

- a) The authority retains complete control over the timescale. The onus is on a bidder that wishes to prove a credible commercial 'alternative' to resource to meet the timescales.
- b) There are precedents of CD procurements lasting no more than 12 months that have explored various commercial models.
- c) Lessons learned from earlier procurements can be applied constantly in (and at various stages along) a CD process. This would permit timescales to 'accelerate' as market propositions develop.

We would appreciate DCMS views on how CD could be employed to best effect in NGA procurements.

1.7. Connection Vouchers

1.7.1. How interested is your organisation in accessing a voucher scheme for ultrafast connectivity and how would such a voucher scheme favour or disfavor your organisation in competing in wider UBF initiatives?

The consultation document suggests that vouchers will support one-off installation charges (including Excess Construction Charges) for Ultrafast connections for business and residential customers. We note that BDUK has formed a Vouchers Working Group and has engaged certain industry bodies such as BSG and ISPA. The potential eligibility of ISPs for the voucher scheme raises the question of who would install the infrastructure and on what basis the ISPs would interface with the infrastructure provider – what wholesale products could they buy and via what platform?

The consultation document states: "Voucher schemes rely on the customer who will benefit from the service acting as the procuring agent. Therefore there is no specific need for a competitive process." If the customer selects an ISP that is not in the business of infrastructure build, this does not address the question of how that infrastructure gets built.

In practice this would most likely be achieved with BT as the infrastructure provider and EMP as the wholesale interface. Even if an alternative demand aggregation platform were put in place (and ISPs were obliged to use it) it is unclear how a particular infrastructure provider would bid or be selected to do the installation.

For vertically integrated providers, on the other hand, a voucher scheme could be more straight forward. A customer, such as an SME, could approach such a company with a request for connectivity and they could use that customer's voucher to pay for the installation of connectivity to that customer, and then continue to provide them with a service.

As a result of the above, we believe a voucher scheme will be of very limited value in stimulating the provision of innovative and pervasive new infrastructures. We do not advocate the use of Connection Vouchers as a funding option for successfully intervening in the provision of Infrastructure. Our views on the various viable options for this are described in 1.5 above.

We are also aware that BDUK's recent actions in both the infrastructure and demand stimulation arenas, particularly relating to the role of connection vouchers, has confused authorities, suppliers and investors. This has therefore significantly hindered progress.

We urgently recommend DCMS to separate its activities clearly into those relating to ‘demand’ and ‘supply’ interventions, provide clarity on the purpose of each set of activities and run them in parallel for the benefit of the market overall.

1.7.2. How might BDUK minimise the transactional costs of a large scale voucher scheme to encourage efficient use and to reduce administration costs for end users and participating suppliers?

There are a number of ways transactional costs could be reduced, depending on the approach taken to establishing the scheme. It is therefore premature to make suggestions without considering and deciding on a number of the factors described in 1.7.1 above.

We would however like to engage in dialogue on this point as part of the Working Group.

1.8. General

1.8.1. What are the key characteristics of intervention areas in cities that would impact on your organisation’s willingness to participate in city competitions (eg density of premises)?

Our members’ willingness to participate is principally governed by whether or not the procurement process is truly open, fair and technologically neutral.

We have mentioned above many of our members’ concerns which question the openness, fairness and neutrality and some specifics they would want to see addressed In particular:

- the ability to use public funds in other ways than as state aid e.g. **MEIP**
- the ability for the public sector to fully bring its assets and revenue to bear in assisting the business model
- the removal of obligations and conditions relating to ‘leased line parity’
- better use of procurement procedures such as Competitive Dialogue.

These factors have a much greater effect on our member’s ability to engage in cities than the statistical profile of intervention areas- these merely shape and qualify the associated business case.

1.8.2. What evidence exists that the proposed commercial delivery, procurement and funding models identified in this consultation would adversely impact on any suppliers?

Non-incumbent commercial operators are understandably sceptical that state aid deployed in the UBF is intended to support any entities other than the incumbent operator BT, or Virgin Media’s business services. The evidence for this is in the BDUK Framework for rural broadband from which only one supplier, the incumbent, will benefit.

Several INCA members are active in deploying genuine next generation infrastructure - FTTH and high speed wireless - in urban as well as rural areas. They are currently doing this with no state aid. State aid under the UBF that favours the incumbent operators is likely to adversely affect their businesses and risk chilling private sector investment, particularly of the type that many cities in the programme want

to see - i.e. high speed, low cost, transformational digital infrastructure.

There is no reason in principle why State aid should not be granted for the provision of Ultrafast broadband networks in cities, provided they comply with the provisions of section 3.6 of the revised EU State aid guidelines. Paragraphs (82) and (83) set out a clear policy preference to encourage such networks, even in “black NGA” areas, where there is no fibre to the premises, no foreseeable potential for the commercial provision of services above 100 Mbps *and* there is demand for such “qualitative improvements”. Such networks must be operated as wholesale only (we understand that the European Commission will accept functional separation in this case) and the aid must not have an excessively detrimental impact on recent competing NGA investments.

BDUK suggest that where demand is for a dedicated service (“leased line”) then such a service would not constitute “NGA” which could be funded according to the State aid guidelines for broadband networks, or at least would be better funded through a voucher scheme. Whilst voucher schemes may be useful in certain circumstances, we do not agree they are the only way of using public funding to provide connectivity for business users. In its Decision N 131/05 — United Kingdom, FibreSpeed Broadband Project Wales, the Commission had to assess whether the financial support given by the Welsh authorities for the construction of an open, carrier-neutral, fibre- optic network linking 14 business parks could still be declared compatible even if the target locations were already served by the incumbent network operator, who provided price regulated leased lines. The Commission found that the leased lines offer by the incumbent operator was very expensive, almost unaffordable for SMEs. Further precedents exist in Commission Decision N 890/06 — France, Aide du Sicoval pour un réseau de très haut débit and Commission Decision N 284/05 — Ireland, Regional Broadband Programme: Metropolitan Area Networks (MANs), phases II and III.

We have seen or heard no evidence that the challenge to the State aid approval granted to the Birmingham city project has led the European Commission to take a comparatively cautious approach to the umbrella approval for the super-connected cities project. Nor is there anything to suggest that the Birmingham challenge will ultimately be successful.

We do not accept that the presence of duct housing basic copper cable constitutes existing infrastructure which could render an area “black” or “grey” for NGA (though arguably it could for basic broadband). We believe that a postcode or building should be considered white for NGA if there is no fibre, high speed co-ax or high speed wireless service present within the postcode or building.

The reluctance of private sector investors to fund schemes under the present market conditions is further evidence that alternative approaches to stimulation need to be provided.

In terms of the models contained within this consultation specifically, the range of options discussed for all three areas is encouraging. We have provided opinion and evidence as far as possible on those options and models that would encourage greater competition, innovation and investment in NGA. However, as we have advised several times in these responses, the options given are in fact ‘points’ along a spectrum of the commercial and funding variants our members may wish to adopt. Scope should be given through competitive dialogue to explore these variants.

The only adverse impact would be a premature narrowing of these options, or a failure to encourage ‘variants’ in the range between the options/ models proposed in this consultation.

We would recommend that DCMS do not focus their advice on any one (or group of) options and models- but instead provide the means and guidance for cities to explore approaches and determine the Best Value use of public funds for their intended outcomes.

1.8.3. Please provide any additional information you believe is pertinent to this consultation.

We do not believe that it is essential to achieve either a very small number of network operators or a very tight technical specification across networks, in order to achieve effective NGA.

We do believe that service providers need to be assisted with consistent and cost-effective means to utilise the full range of new networks that would arise given our recommendations to change market conditions proposed above.

This was discussed with BDUK in the early stages of developing the rural plans but insufficient activity occurred to provide the assistance necessary.

We strongly urge DCMS to address this aspect in parallel with creating more open market conditions for infrastructure provision- and hence greater competition, innovation and investment in UK NGA.

Finally, we have mentioned in many places throughout our submission, the value our suggestions would have on achieving the European Commission's DAE 2020 targets. We firmly believe this is the right focus:

- establishment of new infrastructure is a long-term capital and business case commitment. Applying short-term priorities to the decision-making process, particularly priorities which force the time horizon to less than 5 years, dangerously skews the options analysis away from the best application of capital
- our city members have intended outcomes that reflect the long-term economic value they want to see from a transformational digital infrastructure, such as 'Gigabit Bristol'. These significantly align with the DAE 2020 expectations. They too have expressed concern that the pressure of short-term objectives is forcing the use of the UBF away from their requirements.

We request that DCMS consider using the targets in DAE 2020 as the objectives for the UBF focus on delivering Transformational Digital Infrastructures for our cities.

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