Roinn Cumarsáide, Gníomhaithe
ar son na hAeráide & Comhshaoil
Department of Communications,
Climate Action & Environment

23 April 2019

Ms Éilis Fallon
Secretariat
Committee of Public Accounts
Leinster House
Dublin 2
D02 A272

Department of Communications, Climate Action & Environment (Vote 29)
Ref: PAC32-I-1388

Dear Ms Fallon,

I refer to your letter dated 5th April 2019 following on from discussions at the Public Accounts Committee meeting on 28th March 2019 in relation to the National Broadband Plan and Metropolitan Area Networks.

The information requested in the aforementioned letter is set out below.

Should you require any clarification or additional information, please do not hesitate to contact Ms. Catherine McGinty in my Department, by email at Catherine.McGinty@dccae.gov.ie or by phone at (01) 6782423.

Yours sincerely,

Mark Griffin
Secretary General

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Metropolitan Area Networks

No. 1: Statistics regarding uptake in relation to Phase 1 and 2 MANs

Telecommunications operators utilising services on the State-owned MANs infrastructure are listed on www.enet.ie and include companies such as Airspeed, BT, Colt, Hibernia Networks, Imagine, Magnet and Vodafone.

The MANs Infrastructure has been in place and providing wholesale telecommunications services since 2004 (Phase I) and 2009 (Phase II), facilitating telecoms operators in providing retail services to end customers. These end customers include, in the main, industrial estates, multinationals, large firms, SMEs, public bodies, educational institutions, as well as fixed and mobile customers outside Dublin.

The Table below shows the number of operators utilising the Phase 1 and 2 MANs.

County	Town		No. of Operators using MAN
Carlow	Phase 1	Carlow	14
Cavan	Phase 1	Cavan	13
		Kingscourt	3
	Phase 2	Cootehill	2
Clare	Phase 2	Kilrush	5
Cork	Phase 1	Cork	36
	Phase 2	Bantry	6
		Blarney	2
		Carrigaline/Passage West/ Ringaskiddy	16
		Charleville	6
		Dunmanway	2
		Fermoy	8
		Kanturk	3
		Kinsale	3
		Midleton	7

County	Town		No. of Operators using MAN
		Mitchelstown	6
		Skibbereen	2
		Youghal	4
Donegal	Phase 1	Letterkenny	15
		Gweedore	5
	Phase 2	Ballybofey/Stanorlar	4
		Ballyshannon	4
		Buncrana	5
		Bundoran	4
		Carndonagh	3
		Donegal Town	5
Dublin	Phase 2	Donabate / Portrane	2
		Lusk	4
		Skerries	2
Galway	Phase 1	Galway	30
	Phase 2	Athenry	3
		Ballinasloe	7
		Clifden	2
		Gort	2
		Loughrea	4
Kerry	Phase 2	Killarney	14
		Castleisland	5
		Tralee	19
		Listowel	4
Kilkenny	Phase 1	Kilkenny	14
	Phase 2	Thomastown	3
Laois	Phase 1	Portlaoise	15
Leitrim	Phase 1	Carrick on Shannon	8

County	Town		No. of Operators using MAN
		Manorhamilton	6
Limerick	Phase 1	Limerick	39
	Phase 2	Abbeyfeale	7
		Newcastlewest	5
Longford	Phase 2	Longford	8
Louth	Phase 1	Dundalk	19
		Drogheda	17
	Phase 2	Ardee	6
Mayo	Phase 1	Ballina	10
		Belmullet	0
		Kiltimagh	5
	Phase 2	Ballinrobe	5
		Claremorris	6
		Knock	2
Meath	Phase 2	Dunboyne/Clonee	4
		Dunshaughlin	2
		Kells	7
		Navan	13
		Trim	8
Monaghan	Phase 1	Carrickmacross	4
		Monaghan	12
	Phase 2	Bailieborough	6
		Castleblaney	6
		Clones	3
Offaly	Phase 1	Tullamore	13
	Phase 2	Edenderry	7
		Banagher	0
		Birr	6

County	Town		No. of Operators using MAN
Roscommon	Phase 1	Roscommon	6
Sligo	Phase 1	Sligo	22
Tipperary	Phase 1	Clonmel	13
	Phase 2	Nenagh	8
		Roscrea	6
		Templemore	5
		Cahir	6
		Carrick on Suir	2
		Tipperary	8
		Cashel	4
Waterford	Phase 1	Dungarvan	9
		Waterford	21
Westmeath	Phase 1	Athlone	24
		Mullingar	15
Wexford	Phase 1	Wexford	22
Wicklow	Phase 2	Blessington	5
		Kilcoole/ Newtownmountkennedy	3

No. 4: An information note on the value of the MANs at the time of the extension of the contract and the methodology used in extending the period of the contract

The MANs were conceived and implemented to address market failure: the absence of competition in high speed telecommunications services and the unavailability of infrastructure to facilitate service providers in developing and delivering services outside of Dublin, in particular, the unavailability of open access dark fibre or duct to deploy such services. The State, through the MAN Programme invested in infrastructure comprised of duct networks, fibre cables and co-location centres serving mainly business areas, business parks, public buildings and educational institutions in cities and towns outside of Dublin.

It is important to note that the MANs were built as a policy response to market failure where the commercial sector would not invest. It was never, therefore, anticipated that there would be a significant financial return to the state on the funds invested.

At a macro level, the existence of the MANS has helped remove barriers to FDI and has reduced the cost of connectivity in the regions by fostering competition in the telecommunications market, facilitating the provision of competitive high speed telecommunication services in the various locations, supporting the expansion of employment and investment in the areas served. These indirect benefits would be a multiple of any direct financial return.

The MSE is also required under the terms of the Concession Agreements to provide for the enhancement of MANs infrastructure annually. These enhancements continually add value to the state owned infrastructure. enet has to date invested over €31 million in the MANs infrastructure and extended the footprint of the MANS by 30%.

There are no plans to sell the MANs and no formal detailed valuation exercise has, therefore, been carried out to assess the market value of the MANs. However, as part of the review of the options of extending or retendering the Concession Agreements for the MANs (referred to in previous correspondence with the PAC), a desktop exercise was undertaken by the Department's Financial Adviser of the potential cashflow earnings to the State of selling the MANs infrastructure versus re-tendering or extending the terms of the Concession Agreements. This was not a formal valuation opinion on the value of the MANs infrastructure.

Rather, it was an exercise which estimated the net disposal proceeds of the MANs assets at the end of the current concession period, or retaining the assets in State ownership under an extension or retender scenario and their disposal at that stage. For the purposes of this exercise, a range of potential net disposal proceeds figures were derived for the MANs infrastructure using multiples of the potential Earnings Before Interest, Tax, Depreciation and Amortisation (EBITDA) of the MANs Concessionaire The figures for EBITDA were sourced from Norcontel for the relevant year of disposal for each of the respective options. The estimated disposal proceeds ranged from €10.5 million to €47.4 million.

This desktop exercise, in conjunction with Norcontel's analysis and financial modelling, showed that it was more beneficial to the State from a financial point of view to extend rather than retender the Concession Agreements.

No. 5: An information note on the revenue share that has accrued to the State since the MANs came into operation, to include details on the estimated additional benefits to the State that were renegotiated as part of the extension process

The MANS I Concession Agreement came into operation in 2004 and the MANs II Concession Agreement in 2009. By the end of 2018, the total amount of revenue share paid by the MSE (enet) to the State for the Phase I and Phase II MANs combined was €9.5m.

In addition, enet has to date invested over €31million in the MANs infrastructure. These enet funded enhancements to the MANs remain in the ownership of the State. The overall fibre footprint of the MANs has increased during the course of the Concession Agreements by over 30%.

Following the decision to invoke the extension provisions contained in both Concession Agreements, the Department entered into discussions with enet. As a consequence of these discussions, a number of changes were agreed to the Concession Agreements that would be of financial benefit to the State, in particular:

- an increase in the State's revenue share
- revised clawback arrangements i.e. compensation arrangements for investments made by the Concessionaire in the final years of the Concession for enhancements to the Phase I MANs
- termination of the Management Fee for the Phase II MANs.

The details of the revised revenue share and clawback arrangements are commercially sensitive; however, the Department estimates that the modified financial terms in favour of the State will result in an estimated €21.4 million improvement in the State's net financial position.

National Broadband Plan

No. 2: An information note in relation to the remaining bidder for the National Broadband Plan, providing details regarding the consortium from the date the tender process opened and any subsequent changes, including the date of the changes

The term "Bidder" refers to the lead Bidder and all of its bidder members. Bidder members are consortium members, key subcontractors and investors. They are the entities that the Bidder relies on to demonstrate its ability to meet the procurement criteria such as economic and financial standing and technical and professional ability.

The name of the remaining Bidder is Granahan McCourt. Granahan McCourt is and always was the lead bidder member.

The Bidder has already named a number of its key subcontractors which include enet, Nokia, the Kelly Group, KN Group and Actavo.

Bidders wishing to participate in the NBP procurement process had to pre-qualify in order to participate in that process.

In accordance with the methodology set out in the Project Information Memorandum (PIM), a detailed Pre-Qualification Questionnaire (PQQ), was circulated to all Bidders for completion, to demonstrate they had the necessary economic and financial standing, together with the required technical and professional capability, to deliver the project objectives. Only those Bidders who complied fully with the PQQ requirements were allowed to participate further in the procurement and were 'pre-qualified' for admission to the Dialogue stage.

The PQQ evaluation process was carried out by the Department's expert evaluation team, comprising technical, financial, commercial and legal expertise.

PQQ Process Description

The PQQ process involved a number of stages to assess Bidder compliance and capacity. Assessments followed the following sequence:

Completeness/Compliance Check – PASS/FAIL criterion

This stage involved a completeness check of each Bidder submission to ensure that Bidders had provided a complete and compliant response to all questions and requirements contained in the Pre-Qualification Questionnaire and had submitted all necessary supporting documentation where required.

Eligibility Requirements – PASS/FAIL criterion

The evaluation team assessed the eligibility of the Bidders to enter the process under Regulations 53(1) and 53(4) of the European Communities (Award of Public Authorities' Contracts) Regulations 2006.

Minimum Requirements – PASS/FAIL and SCORED criteria
Bidders were required to demonstrate necessary Economic and Financial Standing, which was measured against detailed requirements set out in the PQQ, including:

- an assessment of the turnover of the Bidder Members
- examination of the financial capacity (i.e. a measure of the size) of the Bidder Members relative to the obligations and risks each Bidder Member is likely to incur in its respective role on the Project
- examination of financial standing in terms of profitability, gearing and solvency of each Bidder Member as a proxy for financial risk
- financial statements of the Bidder Member over the past three years, and
- S&P/Moody's/Fitch rating or Dunn & Bradstreet ("D&B") credit rating reports on the Bidder Member (where available).

Bidders were also required to demonstrate required Technical and Professional Capability, which was measured and scored against detailed requirements set out in the PQQ, including evidence of previous experience in the following areas:

- Design and deployment of networks
- Operation and maintenance of networks
- Operation of wholesale delivery platforms and serving the needs of retail service providers
- Quality assurance systems and processes

Bidders had to achieve a minimum overall weighted score in respect of their experience evidenced in order to be 'pre-qualified' for admission to the next stage.

Bidders also were required to self-certify to the satisfaction of the Department, their compliance with a number of other key requirements, including the capability to provide insurances and performance bonds.

The procurement documentation issued to all Bidders in 2016, set out a mechanism for the Department to assess and approve or reject, changes to the membership of any of the Bidders, as would be appropriate in a procurement of this scale and duration.

An important part of that assessment was whether or not the Bidder would continue to meet the original pre-qualification assessment criteria, if the change in membership was made. Only if a Bidder continued to meet those thresholds, could the Department consider accepting the change request.

The Department will revert with an information note in relation to the Granahan McCourt bid and changes to its bidder membership during the procurement process. The Department is engaging with relevant third parties in advance.

No. 3: An information note on the procurement process for the National Broadband Plan and safeguards in place to ensure delivery

No. 6: An information note in relation to the derogation from the Government's Contracts Committee on construction projects and the applicable rules for Special Purpose Vehicle (SPV), to include details of the process leading to the appointment of the SPV and adherence to the Office of Government Procurement guidelines

No. 7: An information note on the subsidies to be paid to the commercial operators of the SPV

The National Broadband Plan procurement was an open competition and a Contract Notice was published in the Official Journal of the European Union in 2015.

The Department chose the competitive dialogue type of procurement procedure for the NBP. It is used for contracts where the contract includes design or innovative solutions, or where a contract cannot be awarded without prior negotiation because of circumstances related to the nature and the complexity of the services required.

The NBP procurement process has followed applicable public procurement rules and guidelines, including those of the Office of Government Procurement (OGP).

The Department established a strong governance and oversight framework in relation to the procurement process.

The NBP team is led at Assistant Secretary level and supported by a broad mix of expertise and experience in the areas of procurement, project management, technical specialists, commercial and financial analysts, as well as legal specialists and support staff. The team is supported by expert external consultants, including KPMG, Mason Hayes Curran, Analysys Mason and Price Waterhouse Coopers.

In addition there is oversight in the form of a Steering Group, which oversees the strategy development and operation; and an independent, Procurement Board, including members from the NTMA and OGP, which oversees the procurement processes. Both of these groups are chaired by the Department and comprise independent expert advisers.

Government Construction Contracts Committee (GCCC)

The Government Construction Contracts Committee does not have a role in relation to the NBP procurement process because of the type of contract/project involved.

The Government Construction Contracts Committee (GCCC) was established under Section 11 of Circular 40/02, *"Public Procurement Guidelines – revision of existing procedures for approval of certain contracts in the Central Government sector"*. The GCCC is a forum for the development of public policy on the procurement and contracting of public construction (works) projects, apart from the PPP form of contract.

The NBP is not a public works project which deal mainly with construction projects. A key requirement of the NBP Contract is the requirement to provide services (wholesale high speed broadband services) to premises in the Intervention Area and while that requires construction of a network, it is not being constructed on behalf of the State and the construction is ancillary to provision of services for 25 years.

As it is not a public works project, it was not procured using the Capital Works Management Framework, CWMF. Therefore the process whereby public bodies seek derogation from the use of the standard forms of contract provided in the CWMF, from the GCCC, does not apply.

Further, the NBP procurement has not sought to deviate from standard public procurement procedure. It is an open competition based on a competitive dialogue process as provided for in OGP Guidelines.

Timeline of NBP procurement process

The following are high level milestones reached following the launch of procurement on **22 December 2015**

- **Stage 1 - Pre-qualification:**
    - **March 2016-** five bidders submitted Pre-Qualification Questionnaire
    - three bidders qualified

- **Stage 2 – Invitation to participate in dialogue**
    - **July 2016-** Invitation to participate in dialogue phase issued to three bidders

- **Stage 3 – Invitation to Submit Detailed Solutions**
    - **July 2017-** Invitation issued to three Bidders to submit draft bids
    - **September 2017** - Submission of draft bids by two bidders

- **Stage 3 –Invitation to Submit Refined Detailed Solutions**
    - **August 2018** - a further draft bid received from final bidder

- **Stage 4 – Dialogue Closed/Final Tender:**
    - **September 2018** - dialogue phase closed and final bidder invited to submit its Final Tender which was received on 18 September 2018
    - Final Tender evaluated by the Department's Evaluation Committee

Contractual Protections to the State and obligations

If awarded the Contract, the bidder will be required to build, operate and maintain a high speed broadband network capable of serving all premises in the Intervention Area.
The NBP Contract, if awarded, will initially be overseen by an experienced management team with the appropriate financial, technical and corporate expertise, within the Department.

Long-term, post contract governance arrangements are under development. The 2016 Programme for Government referred to the setting up of an agency that would bring together management of the NBP, MANs, ECAS and possibly other State telecommunications infrastructure and functions under a single State entity. This "telecommunications management agency" would likely be a non-commercial body, but with a commercial mandate, staffed by teams with the appropriate commercial skills who can generate maximum value for the State, and interact and negotiate with commercial entities.

The NBP Contract provides a comprehensive set of protections and legally binding obligations designed to protect the State and ensure delivery, these include:

- A suite of key performance indicators to ensure the service is maintained appropriately
- Significant penalties to address under performance
- Substantial oversight arrangements to monitor progress, costs and take up etc.
- Extensive monthly, quarterly and annually reporting requirements on NBPCo
- Independent audit of accounts
- Ability to "step-in" to manage and direct build and operations where there are material compliance issues.
- Significant oversight of the purchase of materials and subcontractor contracts year on year
- Substantial claw-back provisions on cost savings achieved or to share in future excess profits
- Capped subsidy.

Establishment of new Designated Activity Company ("DAC") and its procurement of subcontractors

In the event of a contract award, the Minister will enter into a contract with a new designated activity company created by the bidder. The need to establish a separate legal entity was a requirement of the procurement documentation in order to provide additional assurance and transparency in relation to the operation of the Company in receipt of State subsidy.

The NBP Contract imposes specific obligations on the new company in relation to how it procures categories of subcontractors and provides the Minister with a degree of oversight in relation to such procurements. For example, the NBP contract contains powers for the Department to require proof from the company that the best market rates have been achieved by it through a robust procurement process in relation to labour and material. The company is required to notify the Department of all tenders issued by it over the deployment period for subcontractors and materials and demonstrate how they have achieved value for money.

No. 8: An information note regarding the 757,000 premises to be covered, including details of the 85,000 premises brought back into the plan - whether they are new builds or previously missed premises

As outlined in correspondence dated 13 March 2019 (ref PAC32-I-1324 and PAC-I-1330) the High Speed Broadband Map (www.broadband.gov.ie) identifies locations and premises as either being served by the commercial sector or requiring State intervention under the NBP.

In order to identify the areas where a State intervention was required, the Department engaged in a mapping exercise which began in 2013[1].

The mapping exercise identified those areas of the country where a high speed broadband service was not available and not expected to be made available on a commercial basis in the near future. The Map was developed in consultation with industry to capture all potential commercial investment meeting the required criteria. The result of this mapping exercise is the Department's colour coded, online High Speed Broadband Map. The Map is searchable by address, townland and Eircode.

An updated Map was published in October 2015 which identified approximately 757,000 premises as being in the intervention area (Amber). The NBP High Speed Broadband Map can be updated during the procurement, or following award of an NBP contract, to reflect new commercial plans, or to update areas where previous plans that have failed to materialise. This flexibility allows for an increase or decrease in the number of premises included in the State Intervention area.

An example of this occurred in April 2017, when the Department published an updated High Speed Broadband Map. This took account of commercial operator plans which had not materialised and new developments since the Map had last been published in 2015.

During this update, 300,000 premises were removed from the intervention area (Amber) and into a new category on the Map – planned commercial investment (Light Blue). These 300,000 premises comprised eir's commercial rural deployment of high speed broadband under a Commitment Agreement signed with the Department in April 2017.

At the same time, through its ongoing monitoring, the Department had identified premises where it had become evident that commercial operators' previously submitted plans for provision of high speed broadband were unlikely to materialise. These premises were mostly at the edges of urban areas. As a result of this work, the Department removed 84,500 premises which had previously been identified as commercially served from the commercial area of the Map (Blue) and placed them into the Intervention area (Amber). These premises will receive access to high speed broadband through the State intervention.

The net result of this assessment was that the intervention area was amended from approximately 757,000 premises to 540,000 premises.

[1] Detail on the Mapping Exercise is available at https://www.dccae.gov.ie/en-ie/communications/topics/Broadband/national-broadband-plan/high-speed-broadband-map/Pages/The%20Mapping%20Exercise.aspx