

**Opening Statement to Joint Committee on Communications, Climate Action
and Environment**
3 July 2019

National Broadband Plan

Mark Griffin, Secretary General
Department of Communications, Climate Action and Environment

I welcome the opportunity to attend today's meeting of the Joint Committee on Communications, Climate Action and Environment in relation to the National Broadband Plan.

The Department has paid close attention to the Committee hearings over the last few weeks with a range of experts in telecommunications, finance and regulation.

We have listened to inputs supportive of the approach taken but also contrary views.

There appears to be support for the following policy objectives:

- High speed broadband should be provided to 100% of premises in the country
- There needs to be strong protections for the State with full transparency of where the state subsidy is being directed
- There needs to be equal access for all commercial retail providers to the network, so that consumers can get the lowest costs and highest level of services
- We need to provide a future proofed network to ensure that in the future a digital divide between urban and rural areas does not re-emerge; this is reflected in the approach of a predominantly fibre solution proposed by Government, which was supported by ComReg in their evidence
- that prices should be affordable for users – both for connections and products.

These objectives were set out in the Strategy approved by Government in December 2015 and signed up to by bidders through the Pre-Qualification Process.

Complexity of process

There has been commentary to date about the complexity of the process. It is the scale of the project that brings complexity and not the process itself. This is an ambitious one-off intervention to bring high speed broadband to 1.1 million, people, 540,000 premises across the country, dispersed amongst the most challenging areas in terms of geography and topography.

The competitive dialogue process was chosen as it is designed for processes of this type where it is not possible to fully define tender requirements without extensive engagement with bidders.

The Department's negotiating team met with the bidders on over 450 occasions culminating in over 850 hours of dialogue overall. We left no stone unturned in working with the bidders throughout the process.

Complexity of Governance

We have embedded very strict governance into the contract reflecting the requirements of State Aid rules, the public spending code, the level of State subsidy involved and the fact that we are dealing with a 25 year contract.

The importance of strong governance to protect the taxpayer's interest was recognised from the outset of the procurement. Following consultation with stakeholders, including ComReg, the detailed principles of the Governance model were set out in the procurement documents and also agreed to by the shortlisted bidders. These included:

- Access for all bidders to critical infrastructure on equal terms
- Significant penalties to address under performance
- Substantial oversight arrangements to monitor progress, costs and take up etc.
- Substantial claw-back provisions on cost savings achieved or to share in future excess profits

- Standalone Board responsible for the ring-fenced operations and day to day management of NBPCo with the Board required to report to the Minister regularly.

Capacity of NBI

Comments have been made about the capacity of National Broadband Ireland (NBI) to deliver the National Broadband Plan. NBI has been subject to a rigorous evaluation process both in terms of its financial and technical capabilities and its proposed solution. NBI has participated in the process for more than 3 years and at each point in that process, has met the Department's detailed assessment criteria which have been published and in some key areas well exceeded those requirements.

Eir 300k

In April 2017 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 publication of the Map, notably the Commitment Agreement signed by eir with the Department to deploy high speed broadband to approximately 300,000 premises in rural Ireland.

The Department was obliged to take account of the eir proposals in accordance with State Aid rules and the map and the number of premises in the intervention area was adjusted downwards accordingly.

Evidence from ESB at the Committee last week indicates that this decision, unavoidable though it was from a State Aid perspective, had a material impact on the commercial viability of the project.

Eir's appearance at the Committee and correspondence of 28 June 2019

The Department notes the detailed contribution of eir last week where they asserted that high-speed broadband could be provided in the Intervention Area for €1 billion if they were allowed to deliver it outside what they refer to as the “constraints” of the NBP procurement process.

In subsequent correspondence with the Department, received last Friday and copied to the Committee, they set out a range of €512m to €1.55 billion of

subsidy, with the higher figure referred to as the mid-range scenario, and exclusive of VAT and contingency.

In its letter eir make it clear that it is not “a formal offer designed to replace or supersede the current NBP procurement process”. Nor could it be as eir withdrew from the process in 2018. From a purely legal perspective the Government could not accept such an offer even if it were made, given procurement and state aid law. The State cannot simply mandate and fund directly outside a procurement process any economic undertaking to carry out a project of this nature. We have covered this ground previously when the issue arose about assigning the NBP to ESB.

If we had to start a new procurement process for whatever reasons, we estimate that it would take at least 3 years taking account of the requirement to consult on a new strategy, the procurement rules which mandate particular timelines, State Aid notification, a new CBA, and evaluation. Further time would be required to mobilise and commence rollout. In 3 years' time, the preferred bidder under current process would have connected up to 1,000 broadband connection points across all counties and passed over 200,000 premises with high quality, high-speed broadband at affordable prices.

There would be no guarantee that a new procurement process would attract bidders and if it did, there could be no certainty as to what the ultimate price would be. What is certain though is that whatever form that process took, the resulting contract would still need robust governance and oversight measures of the nature specified in the current contract.

The Department welcomes the commitment in the eir letter to supporting the NBP and the provision of pole and duct products.

We have had an opportunity to carry out an assessment of the eir letter and we are happy to take questions on it from the Committee.

ENDS