Briefing note on National Broadband Plan prepared for Joint Committee on Communications, Climate Action and the Environment by Dr. Dónal Palcic and Prof. Eoin Reeves (Department of Economics, Kemmy Business School, University of Limerick), Wednesday 19th June 2019.

Introduction

We have prepared this briefing statement to support our discussion of issues related to the procurement of the National Broadband Plan (NBP) at the Joint Committee on Communications, Climate Action and the Environment. We wish to stress that our comments are made as independent observers of the NBP as it has evolved to date. We have had no direct involvement in the planning and procurement of the NBP. We have not had any official advisory roles. Our access to information has been confined to that which has been placed in the public domain, much of which has been heavily redacted. This has placed strict limits on our scope for in-depth analysis of aspects such as the financial appraisals of procurement options, cost benefit analysis, etc.

We wish to state up front that having observed events and analysed the documentation that is in the public domain we conclude that the procurement approach adopted has not satisfied the criteria necessary to ensure that value for money will be achieved. This conclusion is based on our examination of the chosen procurement option, our knowledge of the international experience with similar PPP-type arrangements, the conduct of the procurement process to date and our interpretation of events as they unfolded.

The first half of our statement will adopt a largely broad perspective covering the range of ownership options related to the procurement of infrastructure; the strengths and weaknesses of PPP models of procurement such as the gap-funding model and relevant international experience in that context; and governance issues in relation to PPP. The second half of our briefing statement will build on these issues by focusing on specific aspects of the NBP procurement process to date in more detail.

Regulatory options: the choice of the gap-funding/PPP model

Governments have traditionally had good reasons to be involved in infrastructure industries such as water, transport, energy and telecommunications. These include the critical role of infrastructure in facilitating economic growth and the essential nature of infrastructure and related services in determining living standards and quality of life for all citizens. There are also market failure reasons for government intervention in infrastructure industries including externalities and a tendency towards natural monopoly.

Once governments have made the decision to intervene in infrastructure industries the form of intervention must be decided. There are several regulatory options, ranging from a fully state-owned enterprise at one extreme to private contracts between customers and private infrastructure companies at the other. In between, a number of hybrid models are possible, including market-based approaches such as PPP contracts (for example, concessions or gap-funding models). An important lesson from economic theory is that market-based approaches such as PPPs are less likely to be efficient when the procurement is characterised by hazards such as uncertainty (for example, due to technological change), complexity, low levels of competition and imperfect information.

This is relevant in the case of the NBP. The KPMG ownership report published in December 2015 appraised five options ranging from a state-owned entity (the most state-led approach) to the gap funding model (the most market-led approach). The recommendation in favour of the gap-funding model was not necessarily consistent with economic theory. Moreover, given events that have unfolded, it appears that risks in relation to competition, complexity and uncertainty were underestimated when the gap-funding model was originally recommended.

Justification for PPPs

PPPs can be defined as long term infrastructure contracts between the state and a private contractor. The main characteristics of a typical infrastructure PPP include:

1. the bundling of the different stages of the project life cycle into one contract;
2. risk transfer to the private contractor; and
3. a significant element of private finance.

There are a variety of PPP models that contain some or all of these characteristics. Examples include design, build and operate (DBO) contracts which have been widely used for the procurement of water and wastewater treatment plants in Ireland. More complicated PPP contracts involve private finance. Examples include design, build, operate, finance and maintain (DBFOM) contracts which have been used extensively in Ireland to procure roads, schools, courthouses and primary care centres. It is important to note that while such projects are privately financed they are publicly funded. There is no free lunch. The Exchequer pays for relevant infrastructure-related services over the life of the project. Concession-type PPPs, which have been used to procure Ireland's motorway

network, are similar to DBFOM contracts but the funding or payback derives from a combination of user-fees (e.g. tolls) and exchequer sourced funding.

It should be noted that under each of the models described (DBO, DBFOM, and Concession) the asset is typically handed back to the state at the end of the long term contractual period. The gap funding model used for the NBP therefore differs from these models as ownership of the infrastructure will remain with the private contractor (NBPco). In addition, whereas tenders for the NBP contract competed largely on the size of the subsidy required to provide the infrastructure and related services, the bids for PPP models used in Ireland to date were usually based on whole life costs expressed in net present value terms.

Infrastructure PPPs have become an attractive policy option for governments around the world since the early 1990s when they were pioneered under the private finance initiative in the UK. It is, however, important to put the level of PPP investment in perspective. In its review of infrastructure policy in Ireland, the IMF (2017) showed that that PPP capital stock accounted for between 1 and 10 per cent of national income in countries where PPP has been extensively used. In relative terms, Ireland ranks highly under this measure (approximately 2.5%).

Governments adopt PPP for various reasons. Before we discuss the economic rationale generally provided for PPP, it is important to draw attention to the fact that PPP has frequently been adopted because it can achieve off-balance sheet accounting and budgetary treatment. This was explicitly cited as a "key benefit" of the gap funding model in the KPMG Ownership Report (2015). It is worth emphasising that this does not provide an economically sound criterion for choosing between procurement approaches. It is well established in the PPP literature that the desire to achieve off-balance sheet financing distorts procurement decisions and can lead to a mono-culture in favour of PPP (IPPR, 2001).

Value for money (VFM)

The potential for achieving value for money (or VFM) is one of the most commonly used justifications for using PPP instead of state-led approaches such as traditional procurement or state-owned enterprise. As achieving VFM is one of the key justifications for the procurement model used in the NBP it is instructive to examine these justifications and relate them back to the NBP procurement. In general terms, the PPP model is advocated on the grounds that it exploits a number of VFM drivers. These include competition for contracts and risk transfer. The potential effectiveness

of these drivers is however debatable. We wish to make some observations about these "VFM drivers" in the NBP context.

It is widely accepted that competition for public sector contracts can yield cost savings and greater VFM. The importance of competition for contracts cannot be over-emphasised. Competition increases the incentives for bidders to develop proposals of higher quality and reducing costs and delays. PPP contracts for complex infrastructure typically have a small numbers of bidders but it is worth noting that to date, PPP contracts awarded in Ireland have attracted an average of three detailed bids. Similar levels of competition have been observed in countries considered to be leaders in PPP procurement such as Canada. In relation to the NBP, the recommendation in favour of the gap funding model was based on the assumption that the market for the contract would be competitive although the number of bidders was likely to be low. However, once Siro and Eir withdrew from the process the principal justification for continuing the procurement no longer applied. At that stage the procurement should have been terminated.

The potential negative consequences of continuing an uncompetitive procurement are opportunistic behaviour by the bidder during contract negotiations, as well as re-negotiations after the contract is signed. The international experience in this regard is worth noting. For example, an influential study by World Bank economists that covered 1,000 PPP contracts in Latin America found that over half of contracts in the energy sector and approximately three quarters of contracts in the water services sector were renegotiated. On average, renegotiations occurred within 2.2 years of contract agreement, with the main terms renegotiated including prices, levels of investment, and contract duration (Guasch, 2004). Moreover, it appears that the private sector benefitted from renegotiations in most cases (Engel *et al*., 2014). Importantly, lower levels of competition were found to be associated with higher levels of renegotiations.

Is there evidence that the lack of competition for the NBP contract has impacted on the projects costs to date? One development that raises suspicions in this respect is the substantial increase in projected costs that will arise due to the preferred bidder rolling out fibre in the 300,000 premises area that Eir carved out of the initial intervention area. Would this have been agreed if there was real competition for the contract?

Another justification for PPPs such as the gap funding model is that it provides scope for optimal risk sharing. In the NBP context it has been asserted that the private contractor will assume significant

risks that will create incentives to deliver the infrastructure and related services in a timely and efficient manner. Risk transfer is indeed one of the main drivers of VFM in PPP projects. The available information indicates that the preferred bidder will take on significant risk, particularly in relation to construction risk, operating risk and revenue risk.

In general, one of the main risks transferred in PPP projects is financial risk. Typically, in privately financed PPPs, financial risk is assumed by investors that contribute equity and loans to the PPP. Both providers of finance have 'skin in the game' and this incentivises them to ensure that contractual obligations are met. In the case of the NBP we eventually learned that the level of private equity is €220 million. While this is a non-trivial sum of money it is still a very low percentage of total project costs. It is worth noting the points made by Mr. Robert Watt, DPER Secretary General, who in his letter (dated April 16th 2019) to the DCCAE Secretary General, noted that by 2028

> *"the private operator is projected to have received [redacted] in dividends and interest, together with a repayment of [redacted] of the initial share capital, while the State will have spent up to €2.44 billion by that stage".*

In relative terms, therefore, the preferred bidder does not have a lot of "skin in the game". In addition, the gap funding model for the NBP differs from earlier PPPs in Ireland as it appears that the special purpose vehicle (SPV) is not borrowing significant amounts from banks or international capital markets for the purpose of financing the investment. Instead, it appears that they will work on a cash-flow basis and rely on payments from the Exchequer to finance their investment. Unlike other privately financed PPPs therefore, this gap funding model approach will not possess the advantages that arise from the due diligence and close monitoring of all aspects of the deal by experienced lenders. Overall, it appears that some of the risk-sharing advantages that typically apply to PPP projects do not apply in this procurement model, which increases concerns that the procurement will not deliver VFM.

The last aspect of risk transfer that we wish to focus on relates to the enforcement of risk transfer provisions in the post-contract stage. There is a significant difference between '*agreed*' risk transfer and '*de facto*' risk transfer. The early experience with schools PPPs in Ireland illustrates this point, with available evidence indicating that private contractors were not penalised over the first three years of the contract despite evidence of underperformance. The *de facto* enforcement of risk

transfer requires adequate flows of information and strong management of contracts by the public sector. These are by no means guaranteed. While a degree of 'give and take' is required if successful contractual relations are to be sustained, there are risks attached to the public sector being 'locked in' to long-term contracts and public sector managers can be reluctant to penalise contractors and enforce risk transfer.

Governance issues

Turning to the question of governance in a broader sense we wish to make some observations and raise concerns about the governance of the NBP procurement. First, it is important to remind ourselves that good governance essentially ensures that the interests of citizens are protected. In a democracy it is important that decisions made on behalf of citizens are legitimate and this requires that decision makers such as governments, elected representatives and public servants are accountable for their decisions. In the infrastructure context, it is well recognised that if accountability is to be assured there must be as much transparency as possible.

When delivering infrastructure, good governance is required across the full procurement and project life cycle. At the pre-contractual stage good governance is required in relation to project appraisal (including cost-benefit analysis), the appraisal of the procurement options and the conduct of the procurement process. At the post-contractual stage there are also governance challenges in relation to contract management over the life of the contract which in the case of the NBP is a 25-year period. Events as they have unfolded give reason for concern about the governance of the NBP procurement to date, as well as concerns for the future.

There is very limited information about the cost-benefit analysis (CBA) in the public domain. The available data does not include detailed breakdowns of valuations, assumptions, etc. It is important to recognise that CBA is not an exact science so there are governance risks around aspects such as optimism bias and the potential for manipulation. It is therefore important that the CBA is adequately scrutinised on an independent basis. The communications from DPER are instructive in this regard and raise concerns about critical aspects of the CBA. The point we wish to focus on concerns the estimated benefits arising from the NBP which were reduced following consultation between the authors of the CBA and DPER. Memo PER 00431-19 from DPER states that in response to DPER concerns, benefits were reduced by €1.13 billion (in NPV terms).

"However, as these benefits were reduced the cost side of the CBA was also changed ….with costs to the operator…..being reduced by €1.079 billion - apparently due to an error which had gone unspotted in all iterations of the analysis. This discovered reduction in costs fortuitously compensates for the reduction in benefits arising from our observations on the previous version of the CBA. In summary, the CBA is not credible and it is questionable whether it is consistent with the Public Spending Code".

These comments by DPER officials, who presumably have access to complete information about the CBA, raise serious questions about this element of governance at the pre-contractual stage. They show the value of independent assessment of appraisal studies and lend support to the recommendation of the IMF's 2017 report on public investment management in Ireland, which recommended that project assessments with key economic performance indicators and underlying assumptions should be published and placed in the public domain.

Governance of the procurement process and post-contract period

The governance problems that have been witnessed in the case of this procurement process have been widely discussed. In economic terms, the fundamental weakness has been the decision to continue the process with one remaining bidder. Other issues have arisen in relation to the changes in composition of the bidder's consortium, the drip feed of information about key aspects of the procurement, including the precise level of equity being invested by the preferred bidder and controversy around interactions between the Minister and investors in the consortium behind the remaining bid.

Overall, the governance problems that have arisen are such that the procurement lacks the required level of legitimacy and public confidence. We wish to draw attention to one other governance issue. Given the DCCAE's lack of experience with complex procurements such as the NBP, it is difficult to understand why the NDFA did not have a more prominent role in procuring the project. The NDFA is the main procurement agency for PPPs and since its establishment in 2003 has developed considerable expertise in procuring several PPP projects. It is worth examining whether the NDFA should have had more than an advisory role in the NBP procurement process.

It is important to note that the NBP contract will require effective management over a 25-year period. Previous experience with PPPs have demonstrated weaknesses in post-contractual governance. For example, in 2018 the Public Accounts Committee examined the Irish PPP experience

and found that PPPs in the schools and roads sectors had not been subject to post-project reviews as required. It is noteworthy that Mr. Robert Watt expressed concerns about the capacity of DCCAE to manage a complex contract such as the NBP. There are also issues in relation the future cost of contract management and the precise roles of ComReg and the DCCAE in regulating the NBP.

Specific NBP issues: the ownership decision

The ownership issue is clearly one of the most important and controversial aspects of the ongoing debate surrounding the NBP process and how best to proceed. As everyone is now aware, the gap funding model adopted for the NBP in July 2016 involves the State providing subsidies to the preferred bidder to roll out the NBP network in the intervention area. Critically, however, the ownership of this asset once constructed will remain with the preferred bidder once the contract ends. While this gap funding approach was previously used for the National Broadband Scheme (NBS), the State only subsidised approximately €80 million of the overall €223 million spent on that particular scheme and recouped some €36 million of this from the European Regional Development Fund. Moreover, the NBS was a relatively short-term scheme, which ended in 2014.

The use of the gap funding model for the current plan differs from the NBS in a number of key areas. First, the NBP is a much larger project involving capital investment of over ten times the amount invested in the NBS. Second, it is the State that is subsidising the vast majority of the capital expenditure required to roll out the network. Third, the NBP is a much longer-term plan that involves more future-proof fibre optic infrastructure compared to the 3G mobile technology included in the NBS.

A review of the NBS scheme was published by Indecon in November 2017 but has not yet been made publicly available. KPMG's Single Bidder Solution Assessment (SBSA) report from December 2018 summarises some of the key recommendations from that report in relation to the gap funding model as follows:

1. the gap funding model should only be adopted on a case by case basis as it may not work for all projects;
2. where the private sector operator retains ownership of an asset with economic value at the end of the contract term then the subsidy paid by State should be lower; and

3. where there is uncertainty in relation to the potential impact of other operators, either as a result of the intervention or due to market or technological developments, then this needs to be reflected in the design of the intervention mechanism introduced.

Given these recommendations and the many complexities involved with the NBP it is therefore worth examining whether the gap funding model was an appropriate procurement model to adopt for the intervention. To address this fundamental issue, the DCCAE needs to provide far more clarity on the precise rationale for the choice of the gap funding model to procure the NBP. A number of the assumptions made in the KPMG ownership report published in December 2015 were questionable at best when first put forward. They appear even more dubious now in light of some of the information that has come out over the past two months. Some of the original assumptions underpinning the recommendation of the gap funding model were that:

1. placing the long term ownership of the NBP network with the private sector would allow private sector bidders to leverage the use of their existing infrastructure and encourage them to continue to invest in the network to develop and exploit new markets created on the back of the wholesale network
2. the aforementioned benefits would be reflected in the "strategic value" that private sector bidders would place on winning the contract, which in a competitive tendering process would be likely to drive down the amount of subsidy required from government.

The assumed strong level of competition among existing industry players for the contract is highlighted by KPMG as one of the key drivers behind the lower nominal subsidy requirement and their calculation that the gap funding model would achieve the lowest net present value (NPV) cost. However, it is difficult to see how KPMG could assume a strong level of competition since there were only two realistic industry players that could be expected to bid. Indeed, KPMG namechecks both Eir and Siro in their report as having the capacity and capability to leverage their existing assets to deliver the NBP at "minimum cost to the public purse". In addition, at the time that KPMG was making its recommendation in 2015, Eir had already announced plans to invest in approximately 300,000 (hereafter 300k) premises within the proposed intervention area after it was finished with its fibre rollout in urban areas towards the end of 2016. The risk of Eir moving forward with its plans and the impact that this would have on the fundamental nature of the NBP appear to have been ignored when the decision to proceed with the gap funding model was made in July 2016.

A number of the assumptions made by KPMG in relation to the other ownership options it examined in 2015 are also highly questionable. For example, KPMG stated that the DBFOM option would involve "significant additional nominal subsidy" over the life of the contract as a result of the government likely seeking step-in rights to operate the network in the event of contract termination. The fact that the government has assured citizens that such step-in rights will be built into the current contract with Granahan McCourt calls into question why KPMG assumed the resulting higher subsidy would occur only in the DBFOM option but not the gap funding option. The DCCAE should therefore clarify whether the assumed "cost" of including step-in rights for the DBFOM model was the only difference between the DBFOM and gap funding models when they made the formal decision to adopt the gap funding model in July 2016.

With regard to the public ownership option, the KPMG ownership report states that it assumes similar costs and revenue cash flows as the private sector options "with the exception of a lower strategic value and additional costs to reflect the start-up nature of the entity and ongoing management costs". It would be useful to see exactly how much "strategic value" was assumed in this difference given that this value was assumed to arise in the gap funding model approach and was predicated on strong competition for the contract which failed to materialise.

In order to properly scrutinise all of the assumptions made by KPMG in their December 2015 ownership report and obtain answers to the issues raised above, it is imperative that the financial appraisal underpinning KPMG's report be published in full. Given this appraisal was conducted at the *ex ante* stage of the procurement process it cannot be considered commercially sensitive so there should be no barrier to publishing it. Without such transparency it is difficult to avoid the suspicion that the assumptions made in the report were engineered to deliver a recommendation for the gap funding model only given the belief at the time that it could "be structured to achieve an off-balance sheet accounting and budgeting treatment for Government".

Specific NBP issues: the 300k Eir premises

A critical juncture in the NBP procurement process was the signing of a commitment deal with Eir in April 2017 to remove 300k premises from the intervention area. This development had serious knock-on consequences in terms of competition for the NBP contract and the cost of subsidy to the State. In terms of cost, the original estimated budget for the NBP was between €500 million and €1 billion with the actually budget most likely towards the upper end of this estimate. We know from KPMG's SBSA report from December 2018 that the estimated total nominal subsidy for the NBP after

Eir's 300k premises were removed from the intervention area in April 2017 was €787 million. What remains unclear is the exact cause of the increase in the cost of subsidy since then.

The DCCAE and KPMG have recently stated that when Eir and Granahan McCourt submitted detailed solution submissions in September 2017, both bids included significantly higher levels of subsidy than the DCCAE's budget model. We have not been given any detail as to why the bids submitted were far higher than expected. KPMG and the DCCAE have continuously highlighted that these higher bids came at a stage when there was still competition in the process. What is left unexplained is why Eir's bid was similar to Granahan McCourt's bid when KPMG's ownership report recommended the gap funding model on the basis of firms such as Eir leveraging their existing infrastructure and competing strongly for the contract by requesting a lower subsidy.

Since Eir withdrew from the competition it appears that the cost of subsidy to the Exchequer has increased further. KPMG's SBSA report from December 2018 states that the "major contributing factors" to the increase in subsidy requested by Granahan McCourt are the "updated cost model' and the "updated blended equity IRR". Although the key figures for the aforementioned factors are redacted, the report states that the increase in the cost model assumed for the NBP was driven by:

1. additional rental cost of infrastructure due to using more ducts than poles compared to previous assumptions;
2. additional capital costs as a result of moving from the rental of Eir's wholesale network in the 300k premises area to NBPco deploying its own fibre over Eir's 300k premises network;
3. additional private finance costs to fund this extra upfront capital expenditure; and
4. additional tax and working capital costs.

The other main factor identified as driving the significant additional cost of subsidy was an updated blended equity IRR which we can assume increased given the report states that it was adjusted to reflect the return required for an assumed higher level of risk. While Analysys Mason touched on the issue of Granahan McCourt opting to roll out their own fibre in the 300k area rather than rent from Eir when they appeared in front of the Committee last week, there are still serious questions as to

1. exactly how much additional cost is being incurred as a result of the decision to build a parallel fibre network in the 300k premises; and

2. why exactly the DCCAE is allowing Granahan McCourt build a duplicate parallel fibre network in this area.

The DCCAE therefore needs to provide more clarity on whether this parallel fibre network is being rolled out purely so that Granahan McCourt can connect back to the MANs networks for their backhaul needs and what the comparative cost of using Eir's regulated wholesale network and backhaul services would have been. Unless the DCCAE can provide convincing answers as to why Eir's fibre cannot be used, it is difficult to see this as anything other than a very costly duplication of infrastructure paid for by the Irish taxpayer.

Specific NBP issues: governance and regulation

KPMG's SBSA report from 2018 repeatedly stresses the fact that the success or otherwise of the NBP will depend on the appropriate implementation and governance of the final contract. The governance of the NBP contract will therefore require a large appropriately skilled and resourced multidisciplinary team to be put in place within the DCCAE to implement the agreed protections and provisions. Mark Griffin's correspondence with Robert Watt that was published last month states that an in-house unit in the Department will require a budget of up to €10 million per annum and include up to 10 permanent civil servants but that these would be supported by specialist external services. However, given the repeated statements from Ministers, civil servants, and the consultants that advised them as to the difficulties imposed by the complexity and scale of the NBP contract, it is worth asking how realistic the proposed €10 million per annum budget is in terms of ensuring the appropriate level of governance and oversight that will be required.

The same correspondence between Griffin and Watt mentions a longer-term goal of the creation of a State agency to manage the governance of the NBP contract and consolidate the State's involvement in the telecoms sector. The DCCAE should reveal what the projected cost of establishing such an entity is and how many of its functions will overlap with the existing regulatory activities of ComReg. The DCCAE should also clarify whether it considered transferring the responsibility for regulating certain aspects of the contract to the vastly more experienced ComReg in order to avoid a costly duplication of regulatory functions in the telecoms market.

Outside of the cost implications of establishing a separate largescale governance and regulatory structure for the NBP within the DCCAE, the decision to do so also had a significant impact on the competitive tension for the contract among existing regulated utilities such as Eir and the ESB (via its

Siro business). In relation to Eir, one of the stated reasons for its withdrawal from the competition was the proposal by the DCCAE to compel Eir to provide access to its network at prices below the regulated prices set by ComReg in the NBP intervention area. As a regulated entity, Eir must ensure equivalence all over the country and would therefore be forced to offer access to its network across the country at the same lower NBP area price if it was awarded the NBP contract.

Another factor affecting the incentives for Eir to bid for the NBP contract was the restrictions that winning the contract would impose on its wholesale market activities. If Eir had won the NBP contract, its wholesale division, Openeir, would not be allowed to sell wholesale products in the NBP intervention area, whereas BT or any other operator would be allowed to offer wholesale products across the country (including the NBP area). Eir would have had to create an independent wholesale entity for the NBP area completely separate from its Openeir division and in order to sell wholesale products across the country would have to require customers to deal with two separate companies. While the logic behind such clear lines of separation is understandable, the fact that Eir is already regulated by ComReg across the country but the DCCAE has proposed setting up a separate regulatory structure for the NBP area with conflicting requirements in relation to, for example, access prices, made it very difficult for Eir to continue with its bid. This again calls into question how KPMG and the DCCAE could have assumed that there would be strong competition for the NBP contract from bidders such as Eir that would drive down the cost of subsidy to the Government.

Outside of these governance and regulatory issues we would like to highlight a number of other concerns based on the detail included in KPMG's SBSA report from 2018. A major concern with the potential for Granahan McCourt to achieve its deployment objectives within seven years is its reliance on Eir's infrastructure to do so. KPMG's SBSA report makes clear that the move from a 5-year rollout timeframe to a 7-year rollout timeframe was partly driven by the projected timeframe for Eir to make ready all of the required poles and ducts in the NBP intervention area. The achievement of full rollout in the NBP area within seven years will therefore be highly dependent on Eir's ability to upgrade its physical infrastructure in an agreed timely manner. Given this reliance it is worth asking the DCCAE what incentives Eir will have to ensure timely upgrade of infrastructure in the intervention area. The DCCAE should clarify whether penalties will be imposed if Eir fail to deliver or if this risk will lie with Granahan McCourt and its subcontractors.

In relation to the corporate structure for the NBP contract, NBPco is the special purpose vehicle (SPV) being created to deliver the plan, however it will subcontract the deployment of the fibre

network to Buildco, a separate SPV. The KPGM SBSA report from 2018 states that the direct or indirect shareholders of Buildco may overlap with those of NBPco and that Buildco will bear the risk associated with network deployment in the NBP area. KPMG then state that it is expected that Buildco will pass down much of this risk to its subcontractors. In return for taking on the network deployment risk, Buildco will receive a margin on the capital costs of labour and materials for the pass network and a contingency on the capital costs of labour and materials for connections. KPMG highlight how any margin not required by Buildco to cover increases in deployment costs is retained as profit by Buildco which is not subject to clawback.

Given the complexity of the structure that will be put in place, the DCCAE will need to ensure it has the resources and expertise required to adequately monitor the exact capital costs incurred by Buildco and its various subcontractors. The DCCAE should also clarify whether they will have an appointee that will sit on the Board of Buildco given it is the main entity responsible for deploying the NBP network. In addition, the DCCAE needs to outline exactly what financial information it will put in the public domain so that the taxpayer can be assured that Exchequer funds are being spent appropriately. This will require a far greater level of transparency in relation to financial information than we have seen to date for similar SPV subcontracting structures for other PPP projects in Ireland.

Lastly, the KPMG SBSA report states that the NBP contract will allow the State to take ownership of NBPco at two break points during the deployment period and after 10 years if NBPco requires further subsidy to continue deployment or fund its future operations. The State can also take ownership after 25 years if NBPco will not commit to operating the network for a further 10 years at that stage. The SBSA report mentions that compensation payments will be made to NBPco if the State ends up taking ownership in these circumstances but the figures involved are redacted. Since it is the State that is funding the vast majority of the capital expenditure required for deployment we should know precisely how much compensation would be due to NBPco if the State ends up taking ownership of an asset which the State has largely funded.

To conclude, the NBP is one of the biggest infrastructure investments in the history of the Irish state and will account for a significant proportion of funds that will be invested under the National Development Plan. It is imperative that the investment is justified, that public resources are allocated optimally, and that the governance of the project meets required standards. It is clear that there have been serious problems with this procurement to date. There are legitimate concerns about the justification for the project as specified as well as the potential cost of the project and

knock-on effects for other investment priorities. It is our considered view that the current procurement should be terminated and more affordable alternatives explored.

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