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Communities and Local
Government Committee

Ordnance Survey

Fifth Report of Session 2007–08

*Report, together with formal minutes, and
written evidence*

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Communities and Local Government Committee

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Ordnance Survey

The purpose of our inquiry

1. Ordnance Survey is frequently described as a national treasure. For more than two centuries, it has surveyed and mapped every square centimetre of Great Britain. On its most visible product—the large-scale maps used every day in every town, village, country lane and remote outcrop—drivers and ramblers, campers and hill-walkers, weekenders and seasoned mountaineers will find every house, every fence, every church and every welcome tavern carefully and accurately marked. Even among its most trenchant critics, Ordnance Survey is a byword for quiet excellence.

2. But those critics exist none the less. For most of its 216-year existence, the agency has been a governmental body, publicly funded and managed. Since public sector reforms in the 1980s and 1990s, however, Ordnance Survey has become a Trading Fund and an Executive Agency. It is still overseen by a Government Department—Communities and Local Government (CLG). It is funded, however, to only a limited degree (and latterly not at all) and required to make a return, in effect a profit, on its operations and to open itself out to commercial competition. This reform has in turn raised questions about the ability of such a dominant organisation to operate fairly in the geographical information market.

3. In mid-2002, our predecessor, the Transport, Local Government and the Regions Committee, inquired into Ordnance Survey's operations. It concluded, among other things that there was “a clear need to define the boundaries of Ordnance Survey public service and national interest work.”¹ Our decision to revisit our predecessor's work five years on was prompted in part by the Government's removal in October 2006 of the final strand of public funding from Ordnance Survey and substantially by CLG's statement in response to questions during our inquiry into its 2006 Annual Report that that ending of the National Interest Mapping Services Agreement (NIMSA) meant that “there is no distinction between public service and commercial activity for Ordnance Survey.”²

4. To gauge whether matters were quite as straightforward as this implied, we approached eight organisations—Ordnance Survey itself, CLG, the Office of Public Sector Information (OPSI), the Advisory Panel on Public Sector Information (APPSI), the Office of Fair Trading (OFT), the Association for Geographical Information (AGI) (which represents both public and commercial information users), the Locus Association (a private sector representative body) and Intelligent Addressing Ltd (a private company which had made the first formal complaint against Ordnance Survey under recently introduced regulatory procedures). As news of our interest spread, we received unsolicited submissions from a further nine organisations, including two Government Departments, representative bodies both governmental and non-governmental, and private sector companies.

1 Transport, Local Government and the Regions Committee, *Ordnance Survey*, 10th Report of Session 2001-02, HC 481, para 20

2 Communities and Local Government Committee, *DCLG Annual Report 2006*, 3rd Report of Session 2006-07, HC 106, Ev105

5. It is instantly clear from the submissions that we received that the expertise and dedication of Ordnance Survey's staff and the accuracy and quality of its products are held in the highest esteem. What is equally clear, however, is that the assertion that there is no difference between its roles as a public service provider and a commercial organisation does not match the experience of those bodies—governmental and private sector—who seek to purchase and use the products it provides. Praise for Ordnance Survey's excellence mingles with frustration at what is perceived to be the cost and complexity of obtaining information required to provide public services and to create a base on which private sector competitors may build profitable products of their own.

6. The clear sense identified by our 2002 predecessors that the boundaries are blurred between Ordnance Survey's public service and commercial roles remains strong. Indeed, Ordnance Survey itself believes that a clear distinction between the two roles is impossible to maintain.³ There is also a clear perception that Ordnance Survey continues to operate as a virtual monopoly provider in the field of geographical information provision, and that the regulatory frameworks created specifically to overcome the difficulties raised by its dominant market position have so far proved difficult to use and ineffective.

Ordnance Survey

7. Ordnance Survey was created in 1791—two years after the beginning of the French Revolution—so that the British Army and Royal Navy might have suitable military maps for the defence of the realm. Over the next two centuries, it became established as a global exemplar of how to map accurately and in detail as it plotted the changing terrain of Great Britain. By the time of our 2002 inquiry, Vanessa Lawrence, then and now Ordnance Survey's Director-General and Chief Executive, could say without fear of contradiction: "The Ordnance Survey brand is known throughout Great Britain and in fact throughout the world."⁴ By 2005-06, Ordnance Survey had a trading turnover of £105 million, returned £7.9 million to Government and employed nearly 2,000 people.⁵

8. Since 1999, Ordnance Survey has been a Trading Fund—still part of government, but largely funded through data licensing rather than directly from the public purse. Ordnance Survey continues to operate as a Government Department with executive agency status, but two CLG Ministers are responsible for the public and private parts of its function: Iain Wright MP, Parliamentary Under-Secretary, is currently the "shareholder" Minister, and Baroness Andrews, Parliamentary Under-Secretary in the House of Lords, is responsible for CLG's customer relationship with Ordnance Survey. In addition, within CLG two separate sets of officials report to the appropriate Minister on each aspect of the relationship. In June 2007, Mr Wright's predecessor, Angela Smith MP, set Ordnance Survey performance targets for 2007-08, including an operational profit of £14.6 million

3 Ev 73 and 74

4 HC 481 (2001-02), Ev 1

5 Ordnance Survey, *Annual Report and Accounts for 2005-06*, July 2006, p. 20

and an increase in business of 5 per cent.⁶ The terms of Ordnance Survey's public task are set out in the Annex to its second memorandum to the Committee.⁷

9. Although Ordnance Survey is probably best known for the detailed maps on sale in High Street bookshops, those are in fact a tiny part of its business. The agency is responsible for creating the Great Britain master map, to which changes are made daily—sometimes up to 5,000 of them—as the landscape changes and areas are re-surveyed. That body of data is its unique treasure trove. No one else can gather that data, except from Ordnance Survey, because the costs of mapping in such depth and such detail are prohibitive. From that master map, Ordnance Survey itself derives both paper and digital products, including the famous Landranger-type maps, global positioning systems software and information sets, such as address lists. But most of its revenue comes from licensing the data it collects to private sector companies that add value of their own by translating it into products, such as perhaps most famously the A-Z street atlases of most British cities. These may be based on an annual licence fee, or on a licence allowing products to be used on a specified number of computers or by a set number of users. For some products, the initial charge may be accompanied by a data maintenance fee and/or a copyright fee. By the time our predecessor Committee investigated Ordnance Survey in 2002, the Trading Fund arrangements were three years old and tensions had already begun to arise over precisely how Ordnance Survey operated the licences that other organisations, both public and private sector, require if they are to purchase and reuse that basic data.

The 2002 inquiry

10. The 2002 Report mapped out the difficulties, created by the shift to Trading Fund and executive agency status, relating to ambiguities over where the boundaries lie between Ordnance Survey's role as the guardian and provider of public information and its new role as a profit-returning organisation. Of course, Ordnance Survey had long had a commercial function; its maps had been on sale before 1999, and it had supplied data sets for others to build on. But the tension between Ordnance Survey's long-developed public service function and its new position as just one player, albeit an unusually large one, in the field of geographic information provision had sharpened concerns about its potential to be a monopoly supplier competing unfairly with smaller, privately funded concerns.

11. Our 2002 predecessor, drawing a distinction between the data Ordnance Survey was obliged to collect as a publicly funded agency and the value-added products it might derive from those data, concluded that:

it is reasonable for Ordnance Survey to charge the full cost of providing the maps whether on a web-site for downloading or in paper form. But the Ordnance Survey should not be seeking to obtain a return from provision of these services in order to cover its general overheads nor to contribute to the costs of map data collection.⁸

The 2002 Committee further concluded:

6 HC Deb, 6 June 2007, col. 21WS

7 Ev 76 to 84

8 HC 481 (2001-02), para 13

If Ordnance Survey wants to enter into commercial activities we can see no reason why it should not do so, but the two activities ought to be separately accounted for and its commercial arm should pay the same copyright fees as any other organisation/competitor.⁹

The Committee listed four more issues that needed to be addressed in order to put the relationship between the OS and its competitors back on track:

the dual role of OS as a public service provider and a commercial organisation; the boundaries between OS's operations and those of its licensed partners; the difficulties caused in pricing and copyright negotiations by OS's dominant position in the market; and the availability and cost of OS data.¹⁰

The regulatory and competitive landscape surrounding Ordnance Survey has changed over the intervening five or so years, particularly with the introduction of a new regulatory framework and the creation of a Geographic Information Panel to advise Government. None the less, the fact that all the issues identified as problems in 2002 have repeatedly been raised in evidence submitted to us suggests that underlying tensions remain unresolved.

Public information, private competition

12. The central issue animating our predecessor's inquiry was the question of how Ordnance Survey maintained a distinction between its potentially contradictory roles as the national mapping agency gathering, maintaining and supplying geographical information and as an organisation required to fund those actions, and return a profit, from the commercial development, sale and licensing of products based on that information. That question remains the single largest tension affecting relations between Ordnance Survey and its partners, customers and competitors.

13. Ordnance Survey itself recognises the difficulty of locating the exact boundary between its public and private operations, but argues that the absence of any government funding for its work and the consequent requirement to fund itself entirely from its operations makes it near impossible to draw such a distinction:

Ordnance Survey is required to fund all of its operations (both Public Task and non-Public Task) under its Trading Fund model, and consequently has to obtain a commercial return on all its activities. The distinction between its public service and commercial activity is therefore inherently blurred ... Ordnance Survey therefore believes that the distinction between its public service and commercial activities will remain blurred for as long as it is required to self-finance all of its operations under the Trading Fund model.¹¹

Ordnance Survey costs the taxpayer nothing. Indeed, it fulfils its role as the national mapping agency while returning an annual profit to the Treasury. We recognise that

9 HC 481 (2001-02), para 20

10 HC 481 (2001-02), para 2

11 Ev 74

the fact that Ordnance Survey is required to fund both its Public Task and commercial work entirely from its own revenues makes it difficult to define precisely where its public duty ends and its competition with private operations begins.

14. This lack of clarity causes considerable disquiet among Ordnance Survey's customers, competitors and even partners. The Office of Public Sector Information, the effective regulator for Ordnance Survey, notes: "Tensions can arise from the boundaries between public service and commercial activities for government trading funds" in general.¹² The Office of Fair Trading believes Ordnance Survey is unusual even among major public service information holders in omitting to separate its "monopoly and competitive functions in any way", and says that no description or definition arrived at since 2002 has succeeded in clarifying the distinction between Ordnance Survey activities that derive from its statutory position as the sole organisation granted certain monopoly rights and those it conducts wholly commercially.¹³ The OFT therefore argues for a narrow definition of the public service and national interest work done by Ordnance Survey, noting that other organisations that have a similar public-private split in their task draw a clearer distinction between the two elements of their operation. It gives the example of the Meteorological Office (although it, unlike Ordnance Survey, still receives government funding).¹⁴ The OFT argues in particular that Ordnance Survey should, in the interests of transparency, seek to represent the distinctions between its public service and commercial operations in its annual accounts. This was the view taken by our predecessor Committee in 2002.

15. In its 2006 report on the commercial use of public information, the Office of Fair Trading recommended that Ordnance Survey do this by classing operations using "unrefined" data (that is, the raw data Ordnance Survey collects, holds and maintains as the national mapping agency, including its historic archive data) as part of its public task while classing operations involving "refined" data (that is, products for which Ordnance Survey has added value to the base unrefined data) as the work of its commercial arm. Ordnance Survey has resisted this recommendation, on the grounds that the OFT's concepts of unrefined and refined data do not fit accurately with the terms of the Public Task agreed by the Department for Communities and Local Government and Ordnance Survey.¹⁵

16. The Government, however, has accepted in principle the recommendation that public service information holders should account separately for costs and revenues from refined and unrefined information operations, and discussions are continuing between the Office of Fair Trading and Ordnance Survey on the point.¹⁶ **Ordnance Survey is the only major public service information holder that does not distinguish in its annual accounts between the costs of and revenues from operations primarily conducted in pursuit of its public and its private tasks.**¹⁷ Our predecessor Committee recommended as long ago as

12 Ev 8

13 Ev 9

14 Office of Fair Trading, *The Commercial Use of Public Information*, December 2006

15 Ev 74

16 Department for Trade and Industry, *The Commercial Use of Public Information: Government Response to the Office of Fair Trading Study*, June 2007, p. 9

17 Ev 9

2002 that Ordnance Survey should account separately for its commercial activities. In the interests of transparency, particularly given Ordnance Survey's dominant market position, we recommend that it seek to distinguish as clearly as possible in its annual accounts between the activities it undertakes purely because it remains a quasi-governmental national mapping agency and those it conducts on a firmly commercial basis. We accept that the absence of public funding and the requirement wholly to fund itself place Ordnance Survey in a unique position, which will make a total separation of its activities difficult to achieve.

Licensing data

17. The second area in which disquiet has been raised about Ordnance Survey's relationships with customers, partners and competitors is licensing. Ordnance Survey sets out its own position clearly:

For so long as Ordnance Survey is required to fund all of its operations from its revenues, it needs carefully to control the use of its data in order to preserve the value of the intellectual property rights in the data. It is Ordnance Survey's licensing income which accounts practically for its entire revenue.¹⁸

We recognise that Ordnance Survey's need to fund itself almost entirely from income obtained from licensing re-use of the information it holds requires it to protect as stringently as it can in those licences the intellectual property rights in its base data. International experience suggests that any diminution in its funding levels could affect the quality of the information it provides to its customers. That said, Ordnance Survey should work co-operatively with the private sector in the field.

18. Two dangerous pitfalls have been identified as arising, however, from the way in which Ordnance Survey operates its licensing policy. First, licences are perceived by users in both the public and private sectors as being too costly, over-complex and difficult to negotiate. Secondly, some conditions set by Ordnance Survey have been perceived to be over-stringent and potentially anti-competitive, particularly as regards organisations that compete with it directly or that enter into dispute with it.

19. In its report on the commercial use of public information, the Office of Fair Trading focused on the licence conditions Ordnance Survey set for competitors and partner organisations, highlighting specific and potentially anti-competitive restrictions contained in Ordnance Survey licences. For example, some licences contained a "non-compete" clause, meaning that competitor organisations could not use Ordnance Survey's base information to provide products that competed directly with products produced by Ordnance Survey itself. The OFT regarded this as an unreasonable restriction on competition, and concluded: "We consider this policy to be more restrictive than is appropriate for a public monopoly".¹⁹ Ordnance Survey licences have also included a condition allowing it to end a contract with a licensee which enters into dispute with

18 Ev 75

19 Ev 9

Ordnance Survey, which provides an obvious barrier to a competitor or customer who wishes to make a complaint.

20. The Government, in its response to the Office of Fair Trading report, accepted the recommendation that the “non-compete” licence condition should be removed, and this has subsequently happened. None the less, **the fact that Ordnance Survey has included clauses in licences that effectively require competitors not to compete with it or to complain about it provides a clear example of why both private sector and governmental organisations sometimes perceive it to be acting uncompetitively and unfairly. No such condition should again be included in any licence.**

21. The Office of Fair Trading reported that almost one third of organisations dealing with Ordnance Survey as a public service information holder had complained of experiencing problems in accessing data.²⁰ The Department for Environment, Food and Rural Affairs (Defra), the Office for National Statistics and the Ministry of Defence all described long, expensive and complex licence negotiations, and, particularly, the difficulty of disseminating the information to a variety of users.²¹ The Office of Public Sector Information has also commented on the “strict” Ordnance Survey policy of issuing “specific use” licences:

the exact use to which information is to be put is carefully established, and included in the contractual terms. Any additional use for another purpose entails an application for a further licence... it comes across as restrictive in interpretation and practice.²²

In practice, this may result in organisations being unable to obtain straightforwardly the information they need to carry out their own public functions. Perhaps the single most striking example of frustration with the difficulties of using data obtained from Ordnance Survey comes from its former parent, the Ministry of Defence, which requires “Geospatial Information [for] the armed forces in support of operations, exercises and training both in the UK and overseas.” While recognising Ordnance Survey as a “world class organisation in the field”, the Ministry of Defence told us that it had recently “experienced more stringency and complexity being applied to the release of data by OS, which has resulted in uncertainty and lack of flexibility in the use of that data by the MOD”.²³ Defra, the Local Government Association and the Local Government Data Unit for Wales have expressed similar frustration about the difficulty of obtaining data and the restrictions on the use to which they may be put in, respectively, sharing information on registered common land, naming and numbering new streets, and mapping local responses to foot and mouth disease.²⁴ **We are concerned that public sector organisations charged with carrying out vital public services sometimes find Ordnance Survey’s licensing conditions too complex and inflexible. Even the Ministry of Defence, whose predecessor created the**

20 Office of Fair Trading, *The Commercial Use of Public Information*, December 2006, p. 79

21 Ev 41 to 47

22 Office of Public Sector Information, *Information Fair Trader Scheme; Re-verification of commitment to information fair trading: Ordnance Survey*, October 2005, p. 12

23 Ev 46

24 Ev 41 to 43, Ev 62, and Ev 66

national mapping agency two centuries ago, is uncertain about what use it may make of the data it buys from Ordnance Survey. This is a serious indictment of the standards of clarity achieved in the licences Ordnance Survey offers some customers.

22. Ordnance Survey accepts that its licensing conditions can create difficulties and has worked over the past year in particular—largely as a result of the Office of Fair Trading’s report on the commercial use of public information and a subsequent re-drafting, agreed with the Department for Communities and Local Government, of Ordnance Survey’s Public Task—to simplify the licences and remove restrictions. It notes that its licences contain “a degree of formality and standardisation”, because it wishes to avoid discrimination against individual licensees. It points out, too, that this is sometimes as inconvenient to Ordnance Survey as it is to potential licensees.²⁵

23. Ordnance Survey needs, however, to avoid giving the impression that it is imposing restrictive licences for commercial advantage, a perception that is clearly widely shared. The regulator, OPSI, for example, while verifying Ordnance Survey as a member of the Information Fair Trading Scheme (IFTS), pointed out that “The reputation of Ordnance Survey in the marketplace is not uniformly favourable. It is sometimes seen as obstructive and slow. There is some substance to this impression.”²⁶ Ordnance Survey accepts that its licences are “more complex than in a normal sale of goods transaction ... because they concern the licensing of intellectual property rights.”²⁷ It defends robustly its right to control its licensing regime carefully, however:

If Ordnance Survey were to allow unfettered sharing of its data (which is the ideal for Government customers) then either the prices charged for the data would need to significantly increase (to reflect the much broader use that is being licensed) or the value of its intellectual property rights to the taxpayer would quickly diminish.²⁸

24. Ordnance Survey’s recently redrawn Public Task requires it to “maximise both the accessibility of, and the broader benefits arising from the use of the data” it holds.²⁹ This requires the agency to be as flexible as possible in drawing up licences. The Department for Communities and Local Government believes that Ordnance Survey “actively encourages the use of its data by third parties”.³⁰ The Public Task requires it to “make the content of the datasets widely available in forms that are accessible to customers of all types for wider benefit.”³¹ **It is incumbent on Ordnance Survey, particularly given its special status within the geographical information market, to make the licences it offers partners and competitors as simple, cost-effective and appropriate to the user as possible. It is essential that licences contain conditions that fit the needs of individual partners and**

25 Ev 5

26 Office of Public Sector Information, *Information Fair Trading Scheme; Re-verification of commitment to information fair trading: Ordnance Survey*, October 2005, p. 5

27 Ev 75

28 Ev 77

29 Ev 77

30 Ev 71

31 Ev 76

competitors while yet protecting Ordnance Survey’s duty to guard and right to use the intellectual property it holds.

The regulatory framework

25. In the five years or so since the 2002 inquiry, the regulatory framework surrounding Ordnance Survey, and other public service information holders and providers, has changed significantly through the introduction of the Re-use of Public Service Information regulations, the introduction by the Office of Public Sector Information of the Information Fair Trading Scheme, and the creation of the Advisory Panel on Public Sector Information (APPSI).

26. The Office of Public Sector Information operates the Information Fair Trading Scheme, to which Ordnance Survey is a signatory and which sets principles of fairness and transparency in the use and re-use of public service information. This means that “OPSI acts as Ordnance Survey’s regulator, monitoring their licensing and information trading activities under IFTS.”³² OPSI also arbitrates in disputes between public service information holders and partners or competitors. As the Department for Communities and Local Government notes, “Anyone dissatisfied with the way Ordnance Survey responds to requests for access to information and data may complain to OPSI.”³³ The Advisory Panel on Public Sector Information in turn provides an appeal body for those dissatisfied with OPSI’s rulings.

27. It is an encouraging sign of how the framework has operated that Ordnance Survey has faced only two formal complaints, although OPSI reports that a number of other challenges and complaints were raised without leading to formal investigation and that “Facilitation and mediation between the parties involved has usually served to identify areas where practices can be improved.”³⁴ OPSI ruled in favour of Ordnance Survey on one of those formal complaints. On the second, it found for Ordnance Survey on some parts and for the complainant, Intelligent Addressing Ltd, on others. In broad terms, Intelligent Addressing sought to develop a National Land Property Gazetteer, in co-operation with local government, the Local Government Association and the Improvement and Development Agency, to provide local government with detailed local addressing information. To do this, it required access to information supplied by Ordnance Survey and came into direct competition with Ordnance Survey’s AddressPoint product. The substance of the complaint related to the cost and complexity of licence conditions, which Intelligent Addressing claimed made it unable to market its product at a competitive price. OPSI later reported that Ordnance Survey had addressed the five recommendations it made for changes in its practice arising from that case and that it was satisfied with the actions taken.³⁵

32 Ev 7

33 Ev 69

34 Ev 6

35 OPSI feedback on OS response to IA complaint report, 6 March 2007, <http://www.opsi.gov.uk/advice/psi-regulations/complaints/evaluation-of-progress-SO-42-8-4.pdf>

28. Select committees do not investigate individual complaints, and the details of the case involving Intelligent Addressing and Ordnance Survey do not concern us. What is of concern, however, is what happened next. Both Intelligent Addressing and Ordnance Survey chose to seek a review by the Advisory Panel on Public Sector Information of the OPSI decision, the upshot of which was that APPSI ruled that the Re-use of Public Service Information regulations did not in fact cover many of the matters on which OPSI had ruled. In sum, APPSI ruled that AddressPoint was not part of OS's Public Task and was not therefore covered by the regulations. APPSI also suggested that this meant that the regulations do not achieve what the Government intends them to achieve, recommending "that the Government, as a matter of priority, should re-assess the extent to which the regulations and Government policy on PSI are aligned."³⁶

29. In short, in the only significant case to date involving Ordnance Survey and the Re-use of Public Service Information regulations, the final review body ruled that the complaint had been largely invalid from the beginning. This left both Ordnance Survey and Intelligent Addressing out of pocket and back at square one after 18 months of complaint, negotiation, report, appeal and decision. The Locus Association, of which Intelligent Addressing is a member (it is, indeed, chaired, by the Chief Executive of Intelligent Addressing) told us: "Whatever process of arbitration is chosen it should be quick, low cost, transparent, fair, properly enforceable and enforced. This is not the case at present."³⁷ The Office of Fair Trading has also expressed concern at the ruling by the Advisory Panel on Public Sector Information that the Re-use of Public Service Information regulations apply more narrowly than OPSI had thought and than appears to have been intended by the Government.³⁸ The Association for Geographic Information told us that APPSI's ruling had "deepened the confusion for AGI members over the position of OS as a public sector information provider."³⁹ The Local Government Association and the Improvement and Development Agency also identified a lack of clarity between the roles of OPSI as regulator and APPSI as appeal body and the fit between the Information Fair Trading Scheme and the regulations. **Confusion clearly exists over the extent to which the Re-use of Public Service Information regulations apply to Ordnance Survey activities, and this confusion arises from the blurred distinction between its public and private tasks. It is plainly nonsensical that both Ordnance Survey and a private company should have spent 18 months and considerable sums of money on an arbitration process that returned them to square one. We endorse the view of the Advisory Panel on Public Sector Information that the Government should urgently assess the degree to which the Government's objectives are met by the current regulations.**

30. The Office of Public Sector Information has since responded to the ruling by suggesting that it is too restrictive. The Advisory Panel on Public Sector Information ruled that Ordnance Survey's AddressPoint product was not covered by the Re-use of Public Service Information Regulations because it contained base address information obtained originally

36 Review board of APPSI, *Report in relation to requests by Intelligent Addressing Limited and Ordnance Survey to review certain recommendations made in the Report of the Office of Public Sector Information of 13 July 2006 relating to a complaint by Intelligent Addressing Limited (SO 42/8/4)*, 30 April 2007, p. 16

37 Ev 27

38 Ev 16

39 Ev 34

from Royal Mail, and that Ordnance Survey had therefore “added value” to the product before marketing it rather than its simply being base geographical information held by a public service information holder. OPSI takes the view that “Ordnance Survey’s public task extends beyond maintaining its fundamental geographic databases.” OPSI also believes that APPSI’s “more restrictive view, would remove a considerable amount of important public sector information from the scope of the PSI Regulations.”⁴⁰ **The strict interpretation taken by the Advisory Panel on Public Sector Information of the Re-use of Public Service Information regulations highlights a potential flaw affecting the intention behind those regulations. Products to which Ordnance Survey has clearly added value and which it markets commercially should properly be part of its private operation. The base information Ordnance Survey holds as the national mapping agency should, however, be as easily and widely available as possible, allowing for cost recovery. The regulations as currently drafted may be inadequate in ensuring that base information is easily accessible, and we recommend that the Government seek urgently to amend the regulations where deficiencies are identified.**

Geographic Information Panel

31. In 2002 our predecessor Committee recommended the creation of a panel of at least three advisers to inform Government on geographic information issues, suggesting that the Chair of the AGI, the Chief Executive of Ordnance Survey and a private sector representative might provide the correct mix of expertise.⁴¹ Until then, Ordnance Survey had been exclusive adviser to the Government. In April 2005, the Government created the Geographic Information Panel, which now contains 13 members from governmental and non-governmental organisations and is currently chaired by the Chief Executive of Ordnance Survey. The panel is intended to provide Ministers with strategic advice about the use of geographic information. Its main task is the development of a geographical information strategy for the UK, which involves, among much else, developing the use of digital information and compliance with European Union standards and directives. A draft strategy has been submitted to Ministers.⁴² Ordnance Survey continues to provide routine advice separately.

32. The panel is comparatively new, and until the strategy, its first major project, is published, judgment may be reserved on its effectiveness. Questions have been raised, however, about the balance of interests it represents, focusing both on the role of the Chief Executive of Ordnance Survey as its chair and on the mix of private and public sector interests concerned.

33. The panel’s 13 members are: the AGI; the Association of British Insurers (ABI); the e-Government Unit at the Cabinet Office; the Demographic User Group; CLG; Defra; the Ministry of Defence; the Office for National Statistics; Ordnance Survey; Ordnance Survey of Northern Ireland; the Registers of Scotland; the Royal Institution of Chartered Surveyors (RICS); and the Society of Local Authority Chief Executives and Senior Managers. Most of

40 Office of Public Sector Information, *Review of the Office of Public Sector Information’s Investigation of a Complaint*, annexe D to OPSI’s memorandum

41 HC 481 (2002-03), para 25

42 HC Deb, 9 January 2008, Col 554W

these organisations represent governmental interests, local and national. Four broadly represent private sector interests, although both the AGI and RICS represent both private and public sector bodies.

34. There is some concern that the panel is over-weighted towards governmental interests. The Locus Association argues that only the Association of British Insurers and the Demographic User Group unambiguously represent the private sector, while Intelligent Addressing suggests academic and local authority interests could also be better represented.⁴³ The AGI, as a member of the panel, identifies a lack of scientific expertise, and is supported in that by the LGA and IDEA.⁴⁴ The Ministry of Defence, another organisation on the panel, also argues that business interests are under-represented, particularly practical users of geographic information.⁴⁵

35. Both Ordnance Survey and the Department for Communities and Local Government consider that the panel's membership is sufficiently balanced, with each noting that four of the 13 members have a specific remit to represent the private sector. This proportion is, of course, broadly in line with that suggested by our predecessor Committee in 2002, and it seems broadly proportionate to have similar levels of representation from the principal providers of geographic information and the public and private sectors. CLG also points out that the Government can at any time seek advice from other interested parties beyond the panel. The range of governmental organisations represented also covers both the providers of information—Ordnance Survey itself and the Northern Irish equivalent body and Scottish Registers—and those who use it—four Government Departments, the Office for National Statistics and a representative of local government. **We commend the Government for creating a Geographic Information Panel to provide a wide range of advice and views on a national geographic information strategy. We believe that the panel represents a proper range of interests, but recommend that the Government consider whether relevant expertise among the scientific and academic sectors might also be sought.**

36. Our predecessor Committee made no recommendation on who should chair the panel. Since its creation, it has been chaired by the Director-General and Chief Executive of Ordnance Survey, and Ordnance Survey has also provided its secretariat. Given the unease in some quarters about the distinction between Ordnance Survey's public and private roles, the question has inevitably arisen of whether this may represent either an unfair advantage or a conflict of interest. The Locus Association, for examples, asks: "Is it reasonable to expect a Director of a commercial organisation to give advice to Ministers which may be contrary to the interests of his or her own organisation?"⁴⁶ The AGI suggests that chairmanship of the panel should rotate.⁴⁷

37. There is considerable recognition that Ordnance Survey's expertise, market position and continuing role as routine adviser to the Government on geographical issues make it

43 Ev 29 and Ev 22

44 Ev 34 and Ev 63

45 Ev 46

46 Ev 30

47 Ev 34

an obvious leading player on the panel. There is also support within the panel for the chairmanship of the present Director-General and Chief Executive of Ordnance Survey: Vanessa Lawrence planned to stand down last April but was reappointed on the recommendation of the panel's membership.⁴⁸ The LGA and IDEA note the value of having a chief adviser who has "a thorough grounding in the issues of geographic information on the one hand, and the policy framework within which government operates on the other."⁴⁹ The Office for National Statistics concurs.⁵⁰ **The question of who chairs the Geographic Information Panel is properly a matter for the panel itself. None the less, while the expertise and unique commercial and governmental roles of the Director-General and Chief Executive of Ordnance Survey make the holder of that post an obvious contender for the job, the chairmanship need not and should not be held ex officio by that postholder.**

National Interest Mapping Services Agreement

38. The Government announced in October 2006 that the seven-year-old National Interest Mapping Services Agreement would end, leaving Ordnance Survey unique among public service information holders in receiving no funding from central Government. NIMSA had provided funding largely for the mapping of economically non-viable parts of Great Britain, principally in rural areas. Ordnance Survey initially announced that this would result in some rural areas being mapped less frequently than previously, although it committed itself to maintaining accurate mapping for the purposes of the emergency services. It has since announced that it expects to continue mapping rural geography to a level similar to that achieved under NIMSA, but that it expects this to cost it around an additional £1 million a year.⁵¹ **We welcome Ordnance Survey's commitment to maintain rural mapping services following cessation of the National Interest Mapping Services Agreement. We note Ordnance Survey's intention to fulfil this task without receiving Government funding as an example of how the agency maintains its public function in spite of the commercial framework within which it works.**

39. CLG notes that "all primary features, such as residential, industrial or transport infrastructure developments, will continue to be surveyed within six months of completion. A varying two-to-ten year national programme of cyclic rural revision will maintain all secondary features ... the most remote areas still being revised at least once every ten years."⁵² This appears to answer concerns raised by Defra, the Ministry of Defence and the Local Government Association and Improvement and Development Agency that rural and other uneconomic mapping might be adversely affected by the decision to end NIMSA.⁵³ **We recommend that the Department for Communities and Local Government commission at an appropriate future point a study on the long-term**

48 HC Deb, 9 January 2008, col. 554W

49 Ev 64

50 Ev 45

51 Ev 3

52 Ev 70

53 Ev 42, Ev 47 and Ev 64

impact of the decision to end the agreement to ensure that the quality of the mapping of rural and other economically unattractive areas is maintained.

Conclusions and recommendations

1. Ordnance Survey costs the taxpayer nothing. Indeed, it fulfils its role as the national mapping agency while returning an annual profit to the Treasury. We recognise that the fact that Ordnance Survey is required to fund both its Public Task and commercial work entirely from its own revenues makes it difficult to define precisely where its public duty ends and its competition with private operations begins. (Paragraph 13)
2. Ordnance Survey is the only major public service information holder that does not distinguish in its annual accounts between the costs of and revenues from operations primarily conducted in pursuit of its public and its private tasks. Our predecessor Committee recommended as long ago as 2002 that Ordnance Survey should account separately for its commercial activities. In the interests of transparency, particularly given Ordnance Survey's dominant market position, we recommend that it seek to distinguish as clearly as possible in its annual accounts between the activities it undertakes purely because it remains a quasi-governmental national mapping agency and those it conducts on a firmly commercial basis. We accept that the absence of public funding and the requirement wholly to fund itself place Ordnance Survey in a unique position, which will make a total separation of its activities difficult to achieve. (Paragraph 16)
3. We recognise that Ordnance Survey's need to fund itself almost entirely from income obtained from licensing re-use of the information it holds requires it to protect as stringently as it can in those licences the intellectual property rights in its base data. International experience suggests that any diminution in its funding levels could affect the quality of the information it provides to its customers. That said, Ordnance Survey should work co-operatively with the private sector in the field. (Paragraph 17)
4. The fact that Ordnance Survey has included clauses in licences that effectively require competitors not to compete with it or to complain about it provides a clear example of why both private sector and governmental organisations sometimes perceive it to be acting uncompetitively and unfairly. No such condition should again be included in any licence. (Paragraph 20)
5. We are concerned that public sector organisations charged with carrying out vital public services sometimes find Ordnance Survey's licensing conditions too complex and inflexible. Even the Ministry of Defence, whose predecessor created the national mapping agency two centuries ago, is uncertain about what use it may make of the data it buys from Ordnance Survey. This is a serious indictment of the standards of clarity achieved in the licences Ordnance Survey offers some customers. (Paragraph 21)
6. It is incumbent on Ordnance Survey, particularly given its special status within the geographical information market, to make the licences it offers partners and competitors as simple, cost-effective and appropriate to the user as possible. It is essential that licences contain conditions that fit the needs of individual partners and

competitors while yet protecting Ordnance Survey's duty to guard and right to use the intellectual property it holds. (Paragraph 24)

7. Confusion clearly exists over the extent to which the Re-use of Public Service Information regulations apply to Ordnance Survey activities, and this confusion arises from the blurred distinction between its public and private tasks. It is plainly nonsensical that both Ordnance Survey and a private company should have spent 18 months and considerable sums of money on an arbitration process that returned them to square one. We endorse the view of the Advisory Panel on Public Sector Information that the Government should urgently assess the degree to which the Government's objectives are met by the current regulations. (Paragraph 29)
8. The strict interpretation taken by the Advisory Panel on Public Sector Information of the Re-use of Public Service Information regulations highlights a potential flaw affecting the intention behind those regulations. Products to which Ordnance Survey has clearly added value and which it markets commercially should properly be part of its private operation. The base information Ordnance Survey holds as the national mapping agency should, however, be as easily and widely available as possible, allowing for cost recovery. The regulations as currently drafted may be inadequate in ensuring that base information is easily accessible, and we recommend that the Government seek urgently to amend the regulations where deficiencies are identified. (Paragraph 30)
9. We commend the Government for creating a Geographic Information Panel to provide a wide range of advice and views on a national geographic information strategy. We believe that the panel represents a proper range of interests, but recommend that the Government consider whether relevant expertise among the scientific and academic sectors might also be sought. (Paragraph 35)
10. The question of who chairs the Geographic Information Panel is properly a matter for the panel itself. None the less, while the expertise and unique commercial and governmental roles of the Director-General and Chief Executive of Ordnance Survey make the holder of that post an obvious contender for the job, the chairmanship need not and should not be held ex officio by that postholder. (Paragraph 37)
11. We welcome Ordnance Survey's commitment to maintain rural mapping services following cessation of the National Interest Mapping Services Agreement. We note Ordnance Survey's intention to fulfil this task without receiving Government funding as an example of how the agency maintains its public function in spite of the commercial framework within which it works. (Paragraph 38)
12. We recommend that the Department for Communities and Local Government commission at an appropriate future point a study on the long-term impact of the decision to end the agreement to ensure that the quality of the mapping of rural and other economically unattractive areas is maintained. (Paragraph 39)

Formal Minutes

Monday 21 January 2008

Members present:

Dr Phyllis Starkey, in the Chair

Sir Paul Beresford
Mr Clive Betts
John Cummings

Jim Dobbin
Anne Main
Mr Bill Olnier

Ordnance Survey

Draft Report (*Ordnance Survey*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 39 read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Monday 4 February at 4.20 p.m.]

List of written evidence

1	Ordnance Survey	Ev 1
2	Office of Public Sector Information	Ev 6
3	Office of Fair Trading	Ev 8
4	Intelligent Addressing	Ev 19
5	Locus Association	Ev 23
6	Association for Geographic Information	Ev 32
7	Getmapping	Ev 37
8	Department for Environment, Food and Rural Affairs	Ev 41
9	Office for National Statistics	Ev 44
10	Ministry of Defence	Ev 46
11	Dr Pauline Pollard	Ev 47
12	Chris Corbin	Ev 50
13	Local Government Association and Improvement and Development Agency	Ev 58
14	Local Government Data Unit (Wales)	Ev 65
15	Department for Communities and Local Government	Ev 68
16	Association of Regional Observatories	Ev 71
17	Green Amps Limited	Ev 72
18	Ordnance Survey (Supplementary)	Ev 73

Reports from the Committee during the current and previous Sessions

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2007–08

First Report	Coastal Towns: the Government's Second Response	HC 70
Second Report	DCLG Annual Report 2007	HC 170
Third Report	Local Government Finance—Supplementary Business Rate: the Government's Response	HC 210
Fourth Report	Work of the Committee in 2007	HC 211
Fifth Report	Ordinance Survey	HC 268

Session 2006–07

First Report	The Work of the Committee in 2005-06	HC 198
Second Report	Coastal Towns	HC 351 (<i>Cm 7126</i>)
Third Report	DCLG Annual Report 2006	HC 106 (<i>Cm 7125</i>)
Fourth Report	Is there a Future for Regional Government?	HC 352-I (<i>Cm 7119</i>)
Fifth Report	Refuse Collection	HC 536-I
Sixth Report	Equality	HC 468 (<i>Cm 7246</i>)
Seventh Report	Local Government Finance—Supplementary Business Rate	HC 719
Eighth Report	Local Government Finance—Council Tax Benefit	HC 718
First Special Report	Local Government Finance—Council Tax Benefit: Government's Response to the Committee's Eighth Report of Session 2006-07	HC 1037
Second Special Report	Refuse Collection: Government's Response to the Committee's Fifth Report of Session 2006-07	HC 1095

Written evidence

Memorandum by Ordnance Survey

Q1 In 2002, the Committee's predecessor, the Transport, Local Government and the Regions Committee, concluded in its report on Ordnance Survey: "there is a clear need to define the boundaries of Ordnance Survey public service and national interest work." To what extent has the position changed in the intervening five years?

1.1 Government policy on Ordnance Survey's public service and national interest work was updated and formalised in July 2004 by the publication of a new Framework Document for the organisation. This set out Ordnance Survey's status as:

- Responsible for the official, definitive surveying and topographic mapping of Great Britain.
- Responsible for maintaining consistent national coverage of other nationally important geospatial datasets.
- Operating as a Government Trading Fund.

1.2 The Framework Document set out Ordnance Survey's Aim as "Satisfying the national interest and customer need for accurate and readily available geospatial data and maps of the whole of Great Britain in the most efficient and effective way". It went on to set out "The vision for Ordnance Survey and its partners to be the content provider of choice for location-based information in the new information economy". The strategic objectives through which the above Aim was to be pursued are listed at Annex A.

1.3 The other important recent Government policy change was the announcement on 6 November 2006 that the National Interest Mapping Services Agreement (NIMSA) would cease at the end of 2006. NIMSA was established in 1999, since when it has contributed to the costs of an agreed list of mapping activities required in the national interest which would not otherwise have been provided if the decision was made on a purely commercial basis.

1.4 Despite the ending of NIMSA, Ordnance Survey has continued to operate the 24 x 7 Mapping for Emergencies service, and some Coastal Mapping of changes to tide lines and coastal erosion. Other implications of the ending of NIMSA, connected with the currency and content of the mapping of rural areas, are discussed below in our answers to Questions 6 to 8.

1.5 Several developments since 2002 have influenced the "regulatory" environment in which Ordnance Survey trades:

- The Information Fair Trader Scheme (IFTS) was launched in Autumn 2002 by Her Majesty's Stationery Office (now the Office of Public Sector Information (OPSI)).
- The Re-Use of Public Sector Information Regulations (PSIR) 2005 (SI 2005/1515) were implemented in July 2005.
- A report on the Commercial Use of Public Sector Information (CUPI) was published by the Office of Fair Trading in December 2006.

1.6 Under the IFTS, OPSI sets and assesses standards for public sector bodies in their trading of information. It requires them to encourage the re-use of information and reach a standard of fairness and transparency. Ordnance Survey received full accreditation under the IFTS in April 2003, and was re-accredited in March 2006. Ordnance Survey works closely with OPSI to ensure that, as its licensing evolves in response to market needs, it continues to conform to IFTS principles.

1.7 As a public body, Ordnance Survey is subject to the PSIR which establish a framework for re-using public sector information. The framework is based on the principles of transparency and consistency of application, which are analogous to IFTS principles. Much, though not all, of the information Ordnance Survey collects, maintains and disseminates comes under the scope of the Regulations. Provisions within the regulations enable Trading Funds like Ordnance Survey to license and charge for the use of their information.

1.8 The Office of Fair Trading (OFT) published its report on the Commercial Use of Public Information (CUPI) on 7 December 2006. The study looked at a wide range of information produced by the public sector, particularly central government, including information such as employment statistics, property records, company registration files, mapping, meteorological data, and hydrographic charts.

1.9 Ordnance Survey was identified in the report as generating the greatest revenue from trading public information, and was the focus of a number of findings. In response, Ordnance Survey has sought constructive dialogue with all relevant parties. Pending publication of the Government's formal response to OFT we will continue to discuss and seek to resolve the various issues raised by OFT.

1.10 We discuss competition issues below in answer to Q9. However, we note that while the CUPI report concluded that up to £520 million of additional economic value is being lost to the UK economy each year as a result of under-exploiting public sector information assets, the supporting economic evidence indicates that only £22 million of this is related to the geographic information sector (which included UK Hydrographic Office, Ordnance Survey, and a number of other organisations).

(a) *In evidence to the Select Committee's recent inquiry into DCLG's Annual Report, the Department said the ending of NIMSA meant there was "no distinction between public service and commercial activity for Ordnance Survey" (Third report of 2006–07, HC 106; Ev 105). But OS remains the largest public sector information holder in the UK, providing publicly gathered data under licence to organisations both public and private. How clear are the boundaries between its roles as the holder of base geographical information required by its partners and competitors to make their products commercially viable and as a commercial operator within the same marketplace as those partners and competitors?*

1a.1 Ordnance Survey shares the Government view, expressed in its response to the Select Committee in 2002, that there is no clear line between Ordnance Survey as the holder of "base" geographic information and its commercial operations. All of Ordnance Survey's operations contribute to commercial revenue generation in some way, which in turn enables it to create and maintain its "base" geographic information.

1a.2 We comment below (paragraphs 9.4–9.6) on licensing arrangements in respect of Ordnance Survey's partners and competitors. Put simply, Ordnance Survey strongly encourages others to use its data to produce products or services it does not itself produce, and Ordnance Survey avoids competing with those products and services.

1a.3 Ordnance Survey is currently working closely with CLG and Shareholder Executive¹ officials on further clarification and definition of Ordnance Survey's Public Task. The outcome of this work will be shared with the Select Committee once agreed with Ministers.

Q2 *In 2002, the Select Committee also identified "a clear need for some form of independent arbitration so that conflicts could be resolved" between OS and its partners and customers. To what extent has that position changed in the intervening five years?*

2.1 In the period since 2002 the number of complaints against Ordnance Survey has remained low. Since then, IFTS and PSIR (see paragraphs 1.5–1.7 above) have been introduced and each give Ordnance Survey's current and potential customers a right to complain to OPSI where they consider that Ordnance Survey has breached the required standards. Given these, and a number of other possible avenues of redress (OFT and the courts) we believe that there is no need for additional formal processes.

2.2 Since IFTS was introduced there have been two complaints that Ordnance Survey breached the principles of the scheme and/or the PSI regulations. In the first case OPSI found in Ordnance Survey's favour. In the second they found against on part of the complaint. Ordnance Survey worked closely with OPSI to address the concerns raised in their report on the second complaint, and has now met all of OPSI's requirements. However, since then a review of the OPSI findings was completed by the Advisory Panel for Public Information (APPSI). This review supported Ordnance Survey's view that the substance of the original complaint was not covered by the PSI regulations in the first place.

GEOGRAPHIC PANEL

Q3 *What is your assessment of the UK Geographic Panel's operation since its introduction in 2005?*

3.1 The Panel as a group of senior individuals from both public and private sectors has coalesced as a useful forum for deliberation and discussion.

3.2 The GI Panel has made good progress on its main task, the development of a Location Strategy for the United Kingdom. Work on that Strategy has resulted in members of the GI Panel currently working across Whitehall to explain "Why Place matters"; a short report entitled A Location Strategy for the United Kingdom—Why Place matters will be delivered to the GI Panel Minister shortly with a recommendation from HMT officials that it is referred for discussion at PSX(E).

3.3 During that work, the mix of public and private sector colleagues has sometimes made the work environment challenging. This is due to the confidential nature of some of the discussions that certain Government colleagues wished to undertake to ensure that the Strategy met the needs of their Department and the nation's interests.

¹ The Shareholder Executive is based in DTI, with a cross-Governmental remit to advise and support Departments in their role as shareholders

Q4 The Select Committee's predecessor, in recommending in 2002 that an advisory panel on geographic information should be created, suggested that it should have at least three members, including the Association for Geographical Information, OS and a private sector representative. Is the current panel's membership sufficiently balanced with three private sector representatives among its 12 members?

4.1 We consider that the Panel's membership is sufficiently balanced. The current composition represents the views of a variety of providers of geographic information from local and central government and a very wide range of user communities from the organisations chosen. We estimate that these organisations in turn represent perhaps 4,000 or more of the companies and individuals operating in the geospatial industry in the United Kingdom.

4.2 Four of the 13 members have a specific remit to represent the private sector, namely the Association for Geographic Information, Association of British Insurers, Royal Institution of Chartered Surveyors and the Demographic User Group, between them representing more than 700 private sector companies; it would however be inappropriate to have individual companies represented.

Q5 In the memorandum to the Committee during its recent inquiry into DCLG's Annual Report 2006, the Government said that the ending of NIMSA means "there is no distinction for OS between public service and commercial activity". If that is the case, should the head of a commercially active organisation continue, ex officio, to be official adviser to Ministers on "all aspects of survey, mapping and geographic information"?

5.1 Ordnance Survey believes that this is entirely appropriate and does not present any material conflict of interest. The Director General and Chief Executive of Ordnance Survey, as is the case with the Chief Executive of many Agencies and Trading Funds, has long been the official advisor to government on specialist issues. There has never been any direct connection between this role and the availability of NIMSA. Moreover, Ordnance Survey has been "commercially active" for most of its existence, having charged for its information since the 1800s.

5.2 Ordnance Survey advice is focused on survey, mapping and geographic information (GI), primarily related to short term issues. Where specific requests for advice are confidential or strategic in nature they frequently require a rapid response, and can best be delivered by a government organisation with extensive skills and experience in the area of the advice.

5.3 More broadly-based advice and recommendations on medium and longer term key geographic information issues are also available to Ministers from the United Kingdom Geographic Information Panel, established in 2005. Government may at any time request and receive representations on particular issues from other interested parties.

NATIONAL INTEREST MAPPING SERVICES AGREEMENT

Q6 What impact will the ending of NIMSA have on OS' own structures, financing, turnover and dividend?

6.1 NIMSA, established as a seven-year agreement in 1999 when Ordnance Survey became a Trading Fund, has contributed to the costs of an agreed list of mapping activities required in the national interest, which would not otherwise have been provided if the decision were made on a purely commercial basis.

6.2 It is important to appreciate that a significant proportion of NIMSA funded a single major programme—Positional Accuracy Improvement (PAI)—that resulted in an improved standard of absolute accuracy of mapping data for rural areas. This programme was successfully completed in 2006, coincident with the end of NIMSA, and now yields increasing benefits in maintenance costs. The remainder of NIMSA supported a cyclical programme of data maintenance and capture for rural areas, and some relatively lower-cost activities (eg the gigateway discovery metadata service, now separately funded by DCLG).

6.3 The annual value of NIMSA reduced over the period of the agreement, most significantly during 2006–07, when it was originally budgeted to be in the region of £6 million but eventually only £0.96 million was agreed with the Department, representing less than 1% of Ordnance Survey's annual turnover.

6.4 The impact of the ending of NIMSA has naturally been factored into the annual Ordnance Survey business planning process. A three year corporate Business Plan is submitted annually for Ministerial approval. This Plan includes both operational and financial projections, but is not published publicly, for reasons of commercial confidentiality (this is explicitly specified in the Ordnance Survey Framework Document).

6.5 With the ending of NIMSA, Ordnance Survey has reviewed its planned activity, particularly on cyclical data revision. Ordnance Survey now believes that it will be able to continue to provide a comparable level of support to mapping rural geography as achieved under NIMSA, at naturally some financial impact to itself, by adopting a new approach as outlined below (Q7). Ordnance Survey's current estimate is that the additional annual cost to itself of maintaining this support will be up to £1 million higher than currently incurred in the post-NIMSA era.

Q7 What impact will the ending of NIMSA have on rural mapping?

7.1 Ordnance Survey is close to finalising a policy and operational approach that will maintain the quality of rural mapping at sustainable cost to itself despite the ending of NIMSA.

7.2 When the end of NIMSA was announced, Ordnance Survey publicly indicated that it would have an impact on the currency and content of the rural geography within its products, and might also result in the lengthening of rural revision sweep cycles, if Ordnance Survey continued with the current programme.

7.3 However, Ordnance Survey has subsequently reviewed its rural revision policy in the light of the altered funding arrangements, evolving customer needs, and opportunities presented by new processes and technology which have improved Ordnance Survey's capability and efficiency in maintaining its databases. A new approach is close to being finalised which we believe will appropriately underpin the currency and content of the rural geography within Ordnance Survey's products, at some additional cost but not one that is disproportionate.

7.4 Under the new policy all primary features, such as residential, industrial or transport infrastructure developments, will continue to be surveyed within 6 months of completion. A varying two- to 10- year national programme of cyclic rural revision will maintain all secondary features. All areas of Great Britain will be revised in a more integrated programme. The most populated or most rapidly changing areas will be revised more frequently than previously, with the most remote areas still being revised at least once every 10 years. Revision intervals may vary according to patterns of known change and customer need.

Q8 Will the procurement of necessary services be more expensive for local authorities now that OS is not providing them under NIMSA?

8.1 For the avoidance of doubt, the cost of Ordnance Survey products for local authorities was not directly affected by the existence of NIMSA. NIMSA funding enabled investment in maintaining the consistency of currency, content and specification of the mapping to agreed levels, which would not otherwise have been provided if the decision was made on a purely commercial basis. All users have benefitted from these investments in the products supplied by Ordnance Survey.

8.2 The current local government contract (the Mapping Services Agreement or MSA) was let in 2005 following a competitive tender process and Ordnance Survey expects that the same approach would be adopted for any future procurement of mapping information and services by local authorities. It is reasonable to assume that Ordnance Survey would be a bidder in such a tender process in the normal course of events. However the current MSA does not expire until 31 March 2009, and until an Invitation to Tender is issued, with specifications for data and services, it would be highly premature to predict likely costs.

COMPETITION

Q9 Some OS competitors allege it is able to use its position as public sector information holder to compete unfairly, either by imposing over-stringent and costly licence conditions or by developing products of its own in direct competition with theirs but without the associated information licensing costs. There are further complaints that OS is an effective monopoly, preventing fair and transparent competition in the geographical information market. What is your view of these suggestions?

9.1 Ordnance Survey believes that these concerns are based on misconceptions as to the nature of its role and business model, and the terms on which Ordnance Survey competes in the market.

9.2 Revenue from the sale and licensing of Ordnance Survey's products, which represents almost all of its income, is its only possible means of meeting its financial targets as a Trading Fund. It is therefore in Ordnance Survey's interests to ensure that its data is widely available and widely used. Its Vision (see paragraph 1.2 above) makes clear that Partners have a key role to play in the success of Ordnance Survey's business model. The partner network was started in its current form in 2002 and has now grown to over 500 partners generating for Ordnance Survey over £26 million per annum, and we estimate to the economy somewhere in the region of £300-£400 million per annum.

9.3 Ordnance Survey does not consider that it has any kind of privileged status in the market, or that it "competes unfairly". It is subject to the same competition law rules as any other business trading within the UK, and is subject to the enforcement powers of the Office of Fair Trading, and to the possibility of private litigation in the courts, like any other business. Ordnance Survey is additionally subject to the PSIR and participates in the IFTS operated by OPSI, both of which provide for third parties who feel that Ordnance Survey has not met the required standards an avenue to complain to OPSI.

9.4 In deciding how best to meet its financial and legal obligations, Ordnance Survey has taken the view, in line with general competition law, that where it produces and markets products and services itself (either directly or through its appointed distribution network), there is no business or policy case for it to licence

others to use its data to produce the same or similar products.² Ordnance Survey considers that this approach is also consistent with the policy underlying the PSI Regulations and the IFTS, which seek to maximise re-use of data *outside* of the original purpose to which it is put by the public sector information holder. It should be noted, therefore, that Ordnance Survey's approach is to create universal base framework data for both public and private sector usage. Building on this, Ordnance Survey's 500 business Partners create value-added applications.

9.5 Ordnance Survey strongly encourages the use of Ordnance Survey data by third parties ("Licensed Partners") to produce products or services that Ordnance Survey does not produce itself. Ordnance Survey's policy is not to compete with the products and services that are supplied by Licensed Partners using its data, although different Licensed Partners can (and do) compete with each other in various downstream markets.

9.6 Ordnance Survey has developed a licensing model that is designed to minimise the risk of conflict between Ordnance Survey and its licensees, and between different licensees, and which takes account of the wide range of possible uses to which Ordnance Survey data can be put. It has created a series of "Specific Use Contracts" (SUCs) for different types of end use. This approach:

- Enables licences to reflect the nature of the use to which data can be put—for example, internet applications may pay royalties on a "per hit" basis whereas navigation products incorporating an update service will attract an annual royalty payment.
- Ensures that Licensed Partners who compete with each other are all licensed on the same terms and conditions.
- Ensures that changes to terms and conditions are made in a coherent manner. Changes to the standard framework are only made after a full consideration of the implications of the proposal, including the interests of all Licensees.
- Retains some flexibility to take account of the changing nature of the use to which Ordnance Survey data is put over time, by extending the scope of Licenses or adding new categories of SUCs when innovative products and services are devised.

9.7 Ordnance Survey has therefore tried to build flexibility into its licensing approach. Nonetheless, we accept that because, in the interests of avoiding discrimination, we do not negotiate "bespoke" arrangements with individual licensees, there is a degree of formality and standardisation to our licensing arrangements that may sometimes be inconvenient to potential licensees—and also to Ordnance Survey. This is in the overall interests of licensees as a whole, as well as being the approach best calculated to ensure that Ordnance Survey can comply with its own obligations.

9.8 Ordnance Survey also accepts that the terms on which its products are supplied are more complex than in a normal sale of goods transaction. This is necessary because they concern the licensing of intellectual property rights. The complexity reflects the nature of the "product", as well as the wide range of uses to which it can be put, and the range of its customer base. Nonetheless, we share the concern of licensees that terms should be as straightforward as possible, and are currently considering how to reduce their complexity.

Annex A

ORDNANCE SURVEY'S STRATEGIC OBJECTIVES

As set out in the Framework Document (2004)

Ordnance Survey's aim will be pursued through the following strategic objectives:

- collect, portray and distribute the definitive record of the natural, built and planned environment of Great Britain that meets customer needs and the national interest in the most effective manner;
- improve and maintain the definitive databases in a form that facilitates the association and integration of additional geographic data;
- provide, through the data, the underpinning framework for the government and the private sector to join up its spatial information;
- provide national coverage of medium- and small-scale maps;
- develop a business that focuses clearly on the needs of customers and continuously improves customer satisfaction;
- create, develop and maintain strategic and commercial partnerships that will add further value to Ordnance Survey data and products;
- grow the geographic information market and champion the extended use and sharing of geographic information in the government, business and leisure communities;

² It has developed this approach taking into account in particular the approach of the ECJ in case C-418/01 *IMS Health GmbH & Co. OHG v NDC Health GmbH & Co. KG* which indicates that a holder of intellectual property rights is not required to license third parties to use those rights to produce products in circumstances where the right holder is already meeting the market demand itself.

- generate profitable revenue that will fund continuous improvement in database content, data structure, data delivery, up-to-dateness, fitness for purpose and accuracy;
- provide a working environment that fosters leadership, personal development, innovation and team working; and
- advise the UK Government on all aspects of survey, mapping and geographic information.

Memorandum by the Office of Public Sector Information

ROLE OF OFFICE OF PUBLIC SECTOR INFORMATION (OPSI)

1. OPSI operates within The National Archives. The Director of OPSI is also the Controller of Her Majesty's Stationery Office (HMSO) and Queen's Printer (the Controller). The Controller has responsibility for the management of all copyrights and database rights owned by the Crown. This authority is conferred by Letters Patent. HMSO has responsibility for the publication of legislation, official materials and the management of Crown copyright.

2. The Controller has delegated authority to Ordnance Survey to license Crown copyright mapping data and the products that it produces. The delegation of authority is subject to Ordnance Survey complying with the principles of the Information Fair Trader Scheme (IFTS). These principles are: openness, fairness, transparency, compliance and challenge.

3. OPSI, as the regulator, monitors compliance with the IFTS principles through formal verification audits, underpinned by a disputes resolution process. The last verification was undertaken in October 2005. The published report of the verification can be found at <http://www.opsi.gov.uk/ifts/ordnance-survey-ifts-report.pdf>, (Annex A) with Ordnance Survey's response to the recommendations at <http://www.opsi.gov.uk/ifts/ordnance-survey-response.pdf> (Annex B). This report makes a number of key recommendations. Ordnance Survey has addressed these recommendations to OPSI's satisfaction. Accordingly, Ordnance Survey's commitment to the IFTS principles was endorsed in January 2007. OPSI is due to re-verify Ordnance Survey in September 2007.

4. OPSI has responsibility for investigating complaints about public sector information holders, under both IFTS and the Re-Use of Public Sector Information Regulations 2005 (S.I. 2005 No. 1515). Ordnance Survey has been the subject of a number of challenges and complaints to OPSI, few of which have led to formal investigation. Facilitation and mediation between the parties involved has usually served to identify areas where practices can be improved. The most significant and high profile complaint was brought by a limited company, Intelligent Addressing. Details of OPSI's published findings are set out at <http://www.opsi.gov.uk/advice/psi-regulations/complaints/SO-42-8-4.pdf> (Annex C). These and other related issues about government information trading have been the subject of media and industry interest.

ORAL EVIDENCE

5. OPSI would be willing to provide oral evidence if the Committee considers that this would be valuable.

SCOPE OF ORDNANCE SURVEY'S RESPONSIBILITIES

Q1 In 2002, the Committee's predecessor, the Transport, Local Government and the Regions Committee, concluded in its report on Ordnance Survey: "there is a clear need to define the boundaries of Ordnance Survey public service and national interest work." To what extent has the position changed in the intervening five years?

In evidence to the Select Committee's recent enquiry into DCLG's Annual Report, the Department said the ending of NIMSA meant there was "no distinction between public service and commercial activity for Ordnance Survey" (Third report of 2006-07, HC 106; Ev. 105). But OS remains the largest public sector information holder in the UK, providing publicly gathered data under licence to organisations both public and private. How clear are the boundaries between its roles as the holder of base geographical information required by its partners and competitors to make their products commercially viable and as a commercial operator within the same marketplace as those partners and competitors?

6. As a government trading fund Ordnance Survey is required by Treasury to adopt a commercial role in terms of the exploitation of the data it produces. This can lead to perceived tensions arising from the fact that Ordnance Survey is expected to comply with the IFTS principles and the PSI Regulations but is also active in commercial markets.

7. The PSI Regulations refer to activities carried out by public sector bodies that are regarded as part of their public task. The term public task is analogous to the Committee's reference to public service and national interest work. With government trading funds, including Ordnance Survey, the distinction between

public task and commercial activities can become blurred. This issue was highlighted in OPSI's investigation of the complaint made by Intelligent Addressing. We would refer you to the following passages to our published report:

- (a) Regulation 5(1)(a) provides that the PSI Regulations do not apply where:
 - (i) "the activity of supplying a document is one which falls outside the public task of the public sector body".
 - (ii) Public task is therefore a key concept within the PSI Regulations, setting out the parameters of what is available for re-use. The term "public task" is not defined in the PSI Regulations. It is noted, however, EU Directive 2003/98/EC which the PSI Regulations implement refers in Article 2 to public task being "as defined by law or other binding rules in the Member State". OPSI notes that the PSIH's public task is drawn widely and has determined that the meaning of public task in relation to the PSIH covers all those operations of the PSIH which are set out in Article 2 and Schedule 1 of the Ordnance Survey Trading Fund Order 1999 and as further detailed in the PSIH's Framework Document.
 - (iii) The listed operations include "making available a range of products, licences and services to meet the needs of customers in the United Kingdom, in Europe and world wide". Accordingly, the licensing of the product AddressPoint to the Complainant, which is the subject matter of the present complaint, is part of the PSIH's public task and the exclusion in Regulation 5(1)(a) does not apply.
 - (iv) It is noted that neither the PSIH nor the Complainant has suggested that the commercial provision of a geo-spatial database information by the PSIH is outside its public task.

8. Both parties to the complaint requested that the Advisory Panel on Public Sector Information (APPSI) review the recommendations made in OPSI's report. APPSI concluded that the production of Ordnance Survey's Address Point, the subject of the complaint, fell outside Ordnance Survey's public task and so was not covered by the PSI Regulations. Furthermore, APPSI concluded that as AddressPoint contained third party material, this too excluded it from the PSI Regulations. OPSI, in stating the government position, disagreed (see Annex D) : <http://www.opsi.gov.uk/advice/psi-regulations/complaints/statement-review-SO-42-8-4.pdf>

Q2 In 2002, the Select Committee also identified "a clear need for some form of independent arbitration so that conflicts could be resolved" between OS and its partners and customers. To what extent has that position changed in the intervening five years?

9. OPSI acts as Ordnance Survey's regulator, monitoring their licensing and information trading activities under IFTS. IFTS was established following HM Treasury's Cross-Cutting Review of the Knowledge Economy in 2002, which formed part of the Spending Review 2000. The Cross-Cutting Review recognised the need for strong regulation of the trading funds, such as Ordnance Survey, in order to reassure the information industry that the information trading activities of the trading funds is conducted in a fair, transparent and open manner. Within the framework of IFTS, OPSI has improved standards across the trading funds. This has been recognised by the Office of Fair Trading, and in its recent market sector study into Commercial Use of Public Information (CUPI) they stress the importance of OPSI as a strong regulator. In order to increase standards across the wider public sector, OFT have recommended strengthening OPSI's regulatory role with the recommendation that it is resourced appropriately to deliver the benefits for the UK economy. In the light of recent practice, OPSI is publishing revised procedures. Following OFT's recommendations, a prime focus of OPSI's future work would be analysis of charges.

10. OPSI also has responsibility for investigating complaints made against Ordnance Survey and other public sector bodies under either or both IFTS and the PSI Regulations. The complaints investigations have been instrumental in driving up standards.

11. Operating within The National Archives, OPSI reports through to Ministry of Justice ministers. To that extent, OPSI differs from other arbitrators in that it is subject to ministerial control. In practice, however, this has not presented any difficulties and OPSI is perceived, both by the organisations we regulate and the industry as being a robust and effective regulator within the present remit.

GEOGRAPHIC PANEL

Q3 What is your assessment of the UK Geographic Panel's operation since its introduction in 2005?

Q4 The Select Committee's predecessor, in recommending in 2002 that an advisory panel on geographic information should be created, suggested that it should have at least three members, including the Association for Geographical Information, OS and a private sector representative. Is the current panel's membership sufficiently balanced with three private sector representatives among its 12 members?

12. Although OPSI is aware of this Panel, it has no direct involvement and therefore has no observations or comments to offer on the activities of the Panel or its membership.

Q5 *In a memorandum to the Committee during its recent enquiry into DCLG's Annual Report 2006, the Government said that the ending of NIMSA means "there is no distinction between public service and commercial activity". If that is the case, should the head of a commercially active organisation continue, ex officio, to be official adviser to Ministers on "all aspects of survey, mapping and geographic information"?*

13. Tensions can arise from the boundaries between public service and commercial activities for government trading funds. As regulator, OPSI's independent assessment and monitoring, with published reports and action plans, are designed to address perceived tensions in any public sector monopoly.

COMPETITION

Q6 *Some OS competitors allege it is able to use its position as public sector information holder to compete unfairly, either by imposing over-stringent and costly licence conditions or by developing products of its own in direct competition with theirs but without the associated information licensing costs. There are further complaints that OS is an effective monopoly, preventing fair and transparent competition in the geographical information market. What is your view of these suggestions?*

14. The complaint and verification report referred to in response to Question 1 highlighted OPSI concerns over onerous licence terms and conditions. Ordnance Survey has made progress in addressing these points. For example, Ordnance Survey has extended the length of licensing terms to provide to re-users the reassurance of continuity of supply and has also removed the non-compete clause which effectively barred licensees from competing in the same market as Ordnance Survey. OPSI also required Ordnance Survey to review its charges to ensure that where partners compete with the its own products, they are offered access for re-use to products on terms that are fair when compared to the terms that are offered to end users by Ordnance Survey's own operations. In working with Ordnance Survey to develop practical solutions, we have been able to facilitate a licensing framework which is generally acceptable to the industry. We do recognise, however, that there is still work to be done.

15. The OFT, in its CUIP report, also examined competition issues and Ordnance Survey in particular. We understand that the OFT are submitting evidence in response to the Committee.

LIST OF ANNEXES³

Annex A: OPSI re-verification report on Ordnance Survey, October 2005

Annex B: Ordnance Survey response to the re-verification report

Annex C: OPSI investigation of a complaint brought by intelligent Addressing

Annex D: APPSI review of the OPSI investigation into the Intelligent Addressing complaint

Memorandum by the Office of Fair Trading

1. INTRODUCTION: ROLE AND RELEVANCE TO THE INQUIRY

The Office of Fair Trading

1.1 The Office of Fair Trading (OFT) is the UK's consumer and competition authority. The OFT's aim is to make markets work well for consumers. The OFT undertakes this through the enforcement of consumer and competition laws, empowering consumers with the knowledge necessary to make informed choices and proactively studying markets which may not be working effectively.

1.2 Where the OFT conducts market studies, it can recommend action to resolve any problems found. Typically, these recommendations are directed to Government, which is given time to consider the recommendations and respond formally, stating the action that will be taken on the recommendations.

The Commercial Use of Public Information Market Study

1.3 In December 2006 we published the report of our market study on the Commercial Use of Public Information (CUIP)⁴ which is attached at Annex A. This study is of direct relevance to the current inquiry as one of the public sector information holders covered in the study was Ordnance Survey (OS). Furthermore, given the size and significance of OS to the CUIP study, OS was the subject of a case study undertaken by DotEcon Ltd for the CUIP study. Details of the findings of this and the other case studies can be found at Annex C.

³ Not printed

⁴ The commercial use of public information includes both internal commercial use of public sector information within a business and the re-use of public sector information which refers to the use of public sector information to develop new products based in part on the source information. In this memorandum, the terms [commercial] use and re-use will be used with this meaning.

1.4 The OFT undertook a market study in this area for a number of reasons:

- The study falls within one of the OFT's priority areas, concerning the interaction between government and markets, specifically, how public sector bodies compete with the private sector.
- A previous market study on property searches called for more competition and better access to property information.
- The importance and value of public sector information to the economy as a whole.

Oral evidence

1.5 The OFT would be willing to provide oral evidence if the committee considers that this would be valuable.

2. EXECUTIVE SUMMARY

2.1 The CUPI study found that public sector information holders are usually the only source of the basic information they hold. As well as collecting information, some public sector information holders, such as OS, operate in commercial markets adding value to develop consumer and business products based on this information. Where they are, or could be, competing with the private sector they have an incentive to restrict access to information provided solely by themselves. We found that the way many public sector bodies operate costs the economy £500 million annually.

2.2 OS is the largest public sector information holder in the UK (by licensing revenue received), and our concerns regarding the competition problems as a result of OS' actions are considerably greater than those for other bodies.

2.3 For example, OS appears to be the only large public sector information holder that does not separate its monopoly and competitive functions in any way, not even in its accounts. This means that OS cannot demonstrate that it is acting fairly, for overall efficiency.

2.4 Furthermore, OS' licensing policy does not allow others to compete with its own products, thus restricting competition in the market. We consider this policy to be more restrictive than is appropriate for a public monopoly such as OS.

2.5 If these two issues could be addressed with accounting separation of OS' different functions and a more flexible licensing policy, this would make OS more transparent. It would give businesses and consumers fair access to OS' data and allow effective competition and innovation to create benefits of more and cheaper geographic information products, while not undermining the continued presence of OS in undertaking its dual role.

2.6 Given the relative size of OS in the public information sector, addressing these issues would lead to a substantial benefit for users of geographic information and for the wider economy in reducing the detriment imposed on the economy by public sector information holders' actions.

3. RELEVANT FINDINGS AND RECOMMENDATIONS FROM THE OFT'S CUPI MARKET STUDY

Key findings

3.1 The CUPI study found that public sector information holders are usually monopolists in respect of collecting basic data and ensuring these are meaningful. There are good reasons why this is the case, such as: high fixed collection costs, government funding for collection and privileged access, perhaps through statutory collection powers. However, there are other activities which some of these bodies engage in which are more suited to be undertaken in a competitive environment. This is when public bodies undertake commercial development of their basic data, creating information-based products where this could also be undertaken by the private sector. Such activities can be provided efficiently by market forces. Therefore, we want to ensure that public monopolies do not prevent benefits being realised in the economy from competition. In this sector, these benefits include the efficient provision of a wider range of cheaper, innovative information products for both consumers and businesses.

3.2 The CUPI study estimated that the way many public sector information holders operate is costing the economy £500 million annually.

3.3 The study defined two relevant terms to cover the different roles performed by public sector information holders, unrefined and refined information.

“Unrefined information relates to the monopoly activities of the public sector information holder. If the information is not available from other sources, it is unrefined information”.⁵

“Refined information is unrefined information that has been combined with other information or has been manipulated in some manner. This manipulation needs to add value to the information beyond that which makes the underlying data useful for customers”.⁶

⁵ Paragraph 7.21, The Commercial Use of Public Information, Office of Fair Trading, December 2006.

⁶ Paragraph 7.23, The Commercial Use of Public Information, Office of Fair Trading, December 2006.

3.4 These terms will be used in this memorandum to refer to the monopoly and competitive or contestable activities in which public sector information holders are engaged.

3.5 The key findings of the study were that:

- Public sector information holders are typically monopolists of unrefined information and neither are they constrained by competition nor do they face significant and detailed regulatory oversight.
- Unrefined information is not as easily available for commercial use and re-use as it could be. This restricts the range of competitive products which could be developed by and for businesses and for end-consumers.
- Licensing conditions for the use and re-use of public sector information are sometimes overly restrictive, so businesses are unable to use the information in some valuable new ways, restricting innovation and growth in the sector.
- Prices charged are not always linked with the costs of collecting and disseminating the information. Where prices are too high, this can prevent the development of new products and prevent consumer take-up of information-based products.
- Public sector information holders may be favouring their own business over competitors in the prices they charge and conditions they offer for unrefined information. This prevents effective competition between the public and private sector.
- There is both legislation and guidance (much issued by HM Treasury) that is intended to ensure public sector information holders act fairly in pricing use of their information. We found that this legislation and guidance lacks clarity and is inadequately monitored, so public bodies are able to interpret the legislation and guidance in different ways, to the detriment of fair competition and consumers.

Recommendations to government

3.6 As a result of the detriment referred to in paragraph 3.2 above, the CUIP market study resulted in a number of recommendations to Government to address the problems we found. These recommendations aimed to:

- Make as much unrefined information available as possible for commercial use and re-use.
- Ensure that businesses have access to the unrefined information they need at the earliest point that it is useful to them.
- Provide consistent and equal access terms and conditions for unrefined information between businesses and public sector information holders themselves.
- Ensure that public sector information holders account separately for their unrefined (monopoly) activities and their refined (competitive/commercial) activities. This will ensure that they can demonstrate that their prices of both unrefined and refined information reflect the costs of their respective provision in a fair and non-discriminatory manner.
- Enable the Office of Public Sector Information (OPSI), to monitor information holders more comprehensively, using improved enforcement and complaints procedures.

3.7 These recommendations reflect best practice already being carried out by some information holders, such as the Met Office and the British Geological Survey. Since the study was published, many others have indicated a willingness to address our concerns.

Significant problems with OS

3.8 In our report, we noted that the nature and seriousness of problems experienced by re-users of OS data means that the scale of our concern is considerably greater regarding OS than for other information holders.

3.9 Furthermore, we note that previous attempts by regulators and other bodies to influence the behaviour of OS have met with resistance in particular, we highlighted in the CUIP report that the Transport, Local Government and Regions Select Committee's tenth report on Ordnance Survey 2002 recommended that OS should separate its public service and national interest work from its commercial activities.

3.10 The key barriers to effective competition for the commercial use and re-use of OS information are:

- The implementation of OS' licence exception policy goes further than is appropriate given OS' public monopoly status.
- Licence terms do not encourage the re-use of its information.
- OS provides limited access to its unrefined information and concentrates on developing refined information products itself, giving businesses fewer opportunities to add-value and develop new refined information products.

- OS does not separate its unrefined and refined information operations. This makes it difficult for OS to demonstrate whether it is providing equal access and the same prices to business customers and its own internal use of unrefined information.
- OS' specific use contracts allow it the right to terminate its contract with a re-user in a wide range of situations, including when the re-user is in dispute with OS (not just for non-payment). This may prevent some businesses from using OS products or from raising disputes with OS, whether this is justified or not.

The OFT's ongoing dialogue with OS

3.11 OS' response to our report initially showed resistance to the recommended changes. Part of this resistance arose from a misunderstanding of some of the details concerning our recommendations. We have sought to correct such misunderstandings and we are (as recommended in the CUIPI report) in an ongoing dialogue with OS. To date, this has not resulted in any changes being agreed by OS but we hope that progress will be made. If not, as stated in the CUIPI report:

"Should the concerns set out above [five bullet points in paragraph 3.10 above] not be resolved, we would need to consider whether further action by the OFT would be warranted to address these concerns".⁷

Proportionality and workability of relevant OFT recommendations

3.12 Distortions of competition can arise from the actions of both public and private sector bodies in markets. In our report we note the significant cost of public bodies' actions regarding the commercial use and re-use of public sector information. We also recognise that both public and private sector bodies may be resistant to the changes that will occur from our recommendations, particularly where such changes will incur some costs for public sector bodies and therefore, where they have incentives to maintain the status quo.

3.13 Organisation specific arguments against change always need to be balanced against the wider economic benefit for the public sector information industry as a whole and for the wider economy from addressing the problems we found. Our recommendations will have significant benefits for the economy at a very modest cost to any individual organisation involved.

3.14 The recommendations that are relevant to this memorandum include those concerning accounting separately for unrefined and refined information operations, pricing unrefined and refined information in line with costs, implementing transparent internal transfer prices and ensuring that prices, licences and terms and conditions of use of unrefined information are consistent between internal and external customers.

3.15 None of these recommendations are groundbreaking, and most represent no more than the best practice within other public sector information holders. As such, this indicates that these recommendations are applicable for use within organisations involved in earning a return on intellectual property, as well as being justifiable and beneficial for public sector bodies and for competition and innovation.

3.16 The OFT sought deliberately to develop proportionate responses to the problems that were identified in the CUIPI market study. In particular, we were concerned to ensure that implementing more detailed accounting systems and separation was not disproportionately costly, particularly for smaller public sector information holders. Therefore, this recommendation allows for the introduction of these systems over time, to ensure that the adjustments costs are not incurred purely in one year.

3.17 Accounting separately for unrefined and refined information also has implications on the way in which public sector information holders recover their costs from the charges they make. Currently, OS recovers its total costs from among the entire range of products and services, spreading fixed costs between individual products and therefore varying individual product prices.

3.18 If OS were required to account separately for its unrefined and refined information operations, it would need to ensure that charges for its unrefined information covered no more than the costs of its production and supply, the required rate of return to HM Treasury. Equally, its refined information operations would, as a minimum, need to recover the costs of its production (including the internal transfer price for obtaining the unrefined source material) and supply and the required rate of return to HM Treasury. Concerns have been raised with the OFT regarding this issue when coupled with the introduction of fair competition for OS' refined information products, as together these changes may limit OS' ability to adjust its prices to recover the costs of its operations.

3.19 One of OS' main arguments regarding this proposal is that it would reduce the level of income they receive and consequently that returned to HM Treasury. We acknowledge that introducing competition for all of OS' refined information products may result in the entry and expansion of lower cost providers such that OS may lose some customers of its refined information products. However, OS will remain as a monopolist of its unrefined information, therefore there will be an increased demand for unrefined

⁷ Paragraph 7.46, *The Commercial Use of Public Information*, Office of Fair Trading, December 2006.

information and this should balance the losses from refined information. Where this is not balanced out, or where OS loses all customers of a particular refined information product, this would indicate that the presence of OS is no longer necessary in such a market. Overall, these processes will ensure that the costs of operating OS can still be recovered from its charges for information.

3.20 Furthermore and, as noted in the CUIP report, many of our recommendations are not new and there are other requirements on public bodies that will impose similar restrictions to those we are recommending. One example of this is the separation required under the revised Financial Transparency Directive which is being addressed currently by the DTI.

3.21 In conclusion, we are aware that implementing our recommendations will involve costs to public sector information holders; however we are also aware of the significant benefits for the economy as a whole of these changes. The benefits of the introduction of fair competition for refined information far outweigh the costs of the changes we propose within public sector information holders.

4. RESPONSE TO COMMITTEE'S QUESTIONS

Q1 In 2002, the Committee's predecessor, the Transport, Local Government and the Regions Committee, concluded in its report on Ordnance Survey: "there is a clear need to define the boundaries of Ordnance Survey public service and national interest work." To what extent has the position changed in the intervening five years?

4.1 In the intervening five years, the need to define the boundaries of OS' public service and national interest work has increased significantly. In our response below, the key point is that none of the definitions and descriptions arrived at before or after 2002 succeed in separating the monopoly activities OS undertakes from its competitive or contestable activities.

What should be separated?

4.2 The separation we are seeking is between information activities which can be provided by the private sector through efficient markets and those which cannot be provided in this way, or cannot be provided fully and efficiently in this way.

4.3 For OS, this will identify the activities and information for which OS would be justified in having a monopoly position and that for which it would be both possible and efficient for there to be competition in supply. The large scale surveying of the UK would be an example of a current monopoly activity (which leads to the unrefined information which OS holds), where competition in surveying on a GB wide basis is unlikely at present, due to the large costs incurred by OS in this area over a number of years.

4.4 If the public service and national interest definitions conformed to the appropriate monopoly element of OS' activities and products and if this separation was enforced within OS, with products and costs accounted for separately, this would address one of the OFT's key concerns regarding the operation of OS.

Why separation is important

4.5 This separation is of critical importance to effective competition, as OS is in a privileged position as the only organisation that surveys throughout Great Britain in detail. As noted above, the cost of this surveying activity means that this monopoly position is unlikely to change in the immediate future.

4.6 OS is also engaged in the commercial production of refined information products from the unrefined information it collects. This involves interaction with both public and private sector customers, some of whom wish to develop new products using the unrefined information collected by OS.

4.7 Where such commercial activities are not separated from the monopoly activities of collection and production of unrefined information, significant competition problems may arise, both with and without the organisation having that specific intention. These problems can include:

- Using high unrefined information prices to subsidise commercial activities developing refined information—this gives the public body an unfair advantage in developing refined information and can reduce the potential for efficient businesses to compete, thus restricting competition and innovation.
- Providing easier access and better conditions of use for internal use of information when compared to external business customers.
- Using internal development of commercial refined information products as a reason to deny access for commercial use and re-use of unrefined information.

4.8 The first two of these issues may represent an infringement of the competition law when practised by a dominant undertaking.

4.9 All three of these problems would lead to a restriction in competition in the sector and consequently would have a detrimental impact on consumers through higher prices of unrefined information and fewer refined information products being available. This would arise as businesses would lose the ability and

incentives to innovate and produce valuable new products for consumers. As stated in the CUPi report, the cost of the restrictive practices seen throughout the public information sector as a whole were estimated to be £500 million annually.

Definitions and descriptions of OS public service and national interest activities since 2002

4.10 Since 2002, there have been two notable attempts to define the boundaries more clearly. We note that in both cases, these have not identified the specific activities that OS as a public body should provide as a monopolist, compared to the competitive activities OS undertakes.

4.11 The Ordnance Survey Framework Document of July 2004 is an attempt to be more specific about the activities of OS. It states that OS' remit is to:

“... maintain the master map of Great Britain sufficiently up to date and of suitable content and quality to meet the current and future data, graphic and information needs of all its customers; and provide national coverage of medium and small-scale data.”⁸

The Framework Document describes these activities as “core activities”. In addition to these it states:

“in line with government policy for Trading Funds to generate a return on their assets, Ordnance Survey earns revenue from other repayment services where there is no conflict with delivery of core performance targets or where there is likely to be longer-term benefit to core activities. These additional services may be undertaken with private- or public-sector partners. This activity will be undertaken in accordance with HM Treasury guidance on selling into wider markets.”

4.12 This definition is widely drawn and is phrased broadly, such that there is likely to be notable uncertainty regarding the boundaries of the activities described above. The Framework Document also sets out strategic objectives including one to:

“Collect, portray and distribute the definitive record of the natural, built and planned environment of Great Britain that meets customer needs and the national interest in the most effective manner.”⁹

4.13 As with the quotations in paragraph 4.11, this is still widely drawn and makes no specific reference to mapping or mapping products. Also, the phrase, “that meets customer needs” allows significant latitude regarding the boundaries of this objective.

4.14 Furthermore, this document was written when OS was still in receipt of government funding through NIMSA. This funding provided one way of separating OS' activities which has now been removed following the withdrawal of NIMSA funding.

4.15 OPSI, in its Report on its Investigation of a Complaint (SO 42/8/4): Intelligent Addressing and Ordnance Survey, stated that OS' public task

“... covers all those operations . . . which are set out in Article 2 and Schedule 1 of the Ordnance Survey Trading Fund Order 1999 and as further detailed in the . . . Framework Document.”¹⁰

4.16 These require OS to manage all of its operations in such a way that its revenue would consist principally of receipts in respect of goods or services provided in the course of its operations. Pursuant to the Government Trading Funds Act 1973, paragraph 3 of the Treasury Minute dated 15 January 2004 imposes a further financial objective on Ordnance Survey for the 3-year period from 1 April 2004 to 31 March 2007 to achieve a return on capital employed of at least 5.5%, averaged over the period as a whole.

4.17 The Intelligent Addressing complaint was reviewed by the Review Board of the Advisory Panel on Public Sector Information (APPSI), which concluded:

“The core responsibility and public task of OS is to compile and maintain accurate mapping data, and to finance that activity by commercial means, but that it does not necessarily follow that the supply of any particular commercial product thus becomes part of its public task. The Board is aware that OS takes the view that all of the products it supplies are part of its core task, that it is impractical to distinguish between its basic mapping functions which include the maintenance of its main topographical dataset (which it does not supply as such), and commercial products such as AP¹¹ and MMAL¹² which add value and are derived in part from it. In the Board's view such a distinction can, and should, be made . . . the view that OS is required to supply products which produce a commercial return is too indiscriminating, and does not of itself prove that the production or supply of any such products is part of the public task.”¹³

⁸ Paragraph One, Annex B, Ordnance Survey Framework Document, July 2004.

⁹ Paragraph 1.3, Ordnance Survey Framework Document, July 2004.

¹⁰ See paragraph 24, Office of Public Sector Information Report on its investigation of a complaint (SO 42/8/4): Intelligent Addressing and Ordnance Survey, July 2006.

¹¹ OS Product: Address Point.

¹² OS Product: Master Map Address Layer.

¹³ See paragraphs 2.23 and 2.25, Review Board of APPSI Report in relation to requests by Intelligent Addressing Limited and Ordnance Survey to review certain recommendations made in the Report of the Office of Public Sector Information of 13 July 2006 relating to a complaint by Intelligent Addressing Limited (SO 42/8/4). 30 April 2007.

4.18 There is a need to identify the appropriate monopoly element in the geographic information market. This will ensure that the public service and national interest work of OS is drawn narrowly to promote effective competition in the rest of the geographic information market, to the benefit of consumers, government and competitive businesses. This issue was addressed in more detail in Chapter 7 of the CUPi report at Annex A.

- (a) In evidence to the Select Committee's recent inquiry into DCLG's Annual Report, the Department said the ending of NIMSA meant there was "no distinction between public service and commercial activity for Ordnance Survey" (Third report of 2006-07, HC 106; Ev. 105). But OS remains the largest public sector information holder in the UK, providing publicly gathered data under licence to organisations both public and private. How clear are the boundaries between its roles as the holder of base geographical information required by its partners and competitors to make their products commercially viable and as a commercial operator within the same marketplace as those partners and competitors?

4.19 There are no such boundaries present in OS between its roles as the holder of base geographical information and as a commercial operator. This finding arose from work conducted during the CUPi market study. This work included a detailed case study of OS, surveys of businesses using public sector information and evidence submitted to the study team. This response provides detail on the following issues:

- OS does not account separately for its unrefined and refined information.
- There are no internal transfer prices in OS for its own use of unrefined information to develop refined information products.
- OS does not make much unrefined information available for commercial use and re-use.
- The removal of NIMSA funding removes another distinction in OS' activities.
- Practical problems and quantification of problems from OFT survey of business users of public sector information.

Accounting separation

4.20 OS does not account separately for the costs and revenues of its unrefined and refined information businesses, even at the most basic level. This was a key finding of our case study of OS conducted in 2006 for the OFT by DotEcon Ltd. It is particularly important for OS to make this separation because it is engaged in producing refined information and because it gains a significant income from licensing information.

4.21 In terms of best practice from our case studies, we noted that the Met Office operates a well established wholesale and retail split. It also has an internal arms length relationship with its business units so that it treats its internal uses of information the same as its external customers. It has a transparent internal transfer price which represents the cost of providing the unrefined source material which is the same for internal and external users. The British Geological Survey also makes a separation between its wholesale and retail operations.

4.22 Furthermore, a requirement for comprehensive accounts is contained in guidance from HM Treasury, in particular the Fees and Charges Guide:

"Accounting and other information systems should provide the financial information required for setting charges, monitoring financial results against plans and producing accounts and other financial reports. A comprehensive system is particularly necessary where services fall into more than one category or a service moves from one category to another over time."¹⁴

4.23 The implications of a lack of separate accounts can be significant and are highlighted in paragraphs 4.5 to 4.9 above. Our recommendation in the CUPi report for information holders to account separately for their unrefined and refined information operations sought to address this weakness in accounting while maintaining proportionality in terms of the costs of implementation, particularly important for smaller information holders. As the largest income earning information holder in the UK, the benefits of OS altering its accounts and pricing practices to separate unrefined and refined information (including greater competition, innovation and more extensive use of geographic information in the UK) would outweigh the costs of it so doing (including the costs of a more detailed accounting system within OS).

Internal transfer prices

4.24 Without formal separation in the accounts between unrefined and refined information, it is not possible for OS to ensure that it is charging fair and equitable amounts to its external customers for the use of its unrefined information. Furthermore, it is also not possible for OS to determine the appropriate charges that should be paid by its internal refined information operation for its use of unrefined information in developing refined information products. A transparent internal transfer price is a critical step to ensuring

¹⁴ Paragraph 3.3.1 Fees and Charges Guide—Final Revised Text—March 2004 available at: <http://www.aasdni.gov.uk/pubs/FD/fd1005att1.doc>

that external users and re-users of information are paying an appropriate amount for the information they obtain and to demonstrate fair and equal treatment of internal and external customers that will allow competition to develop.

Availability of unrefined information from OS

4.25 Chapter 6 of the CUIP report (see Annex A) provided evidence regarding the availability of public sector information generally. In particular, we received evidence from businesses that claimed:

“OS does not provide a basic mapping product that is a direct extract from one of its databases. This may imply that, in some cases, re-users are unable to gain access to the underlying data (at a stage where the field data has been assimilated but no more).¹⁵ In addition they may have to pay a premium price for a product OS describes as value-added [refined] information.”^{16, 17}

4.26 In addition, we note that at the time of our report, OS’ licence exception policy stated that OS may refuse applications:

“To market a product whose intended use is the same as, or comparable to, that of any product marketed by Ordnance Survey itself or any product which Ordnance Survey intends to market.”^{18, 19}

4.27 Since publication, this reference has been removed from the document noted above, although we have not seen any specific change of policy in determining to whom OS will grant a licence.

4.28 We are aware of case law established in this area which is used by OS as an explanation for its policy.²⁰ We recognise that this case law represents the most recent statement of the outer limit of a dominant undertaking’s obligation to license its IPR under the Competition Act 1998 or Article 82 of the EC Treaty.

4.29 Nevertheless, we consider it preferable for OS to adopt a more flexible licensing policy in this area; indeed, such a more flexible approach would be far more appropriate in relation to the government policy to increase the commercial use and re-use of public sector information. A flexible approach would have the benefit of introducing competition the full range of refined information products OS produces, with lower prices and a wider range of innovative products and services likely to result.

THE ENDING OF NIMSA FUNDING

4.30 The cessation of funding for the National Interest Mapping Services Agreement meant that a possible boundary between OS’ public service and commercial activities was removed.²¹

4.31 The withdrawal of NIMSA places OS in a rare position among public sector information holders in the UK in not receiving any direct government funding. This means that OS’ charges for information will be higher, following the need to recover the full costs of the organisation. Consequently, these charges and its policies in relation to charges will have a greater potential to distort the market for geographic information.

Where no government funding is provided, there is an even more compelling case for structural separation of OS, at very least at the accounting level to prevent competition problems from occurring.

PRACTICAL PROBLEMS

4.32 One of the notable cases of discrimination we encountered regarding OS during the course of our market study concerned tenders for one section of the Pan Government Agreement (PGA):

“One potential bidder was Intelligent Addressing, which claimed it was unable to meet CLG’s requirement for a four year contract in respect of a PGA Lot for the supply of Address Gazetteer data. It explained that the data it wished to supply (the National Land & Property Gazetteer or NLPG) contained an element of data derived from Ordnance Survey and that Ordnance Survey

¹⁵ Footnote 96 from CUIP report, “OS states that it provides information at the first point at which it is useful to businesses and that it has not had requests for its raw data. Businesses state that they would be able to use data in a less refined form than OS currently supplies and that they have asked for this but have been refused.”

¹⁶ Footnote 97 from CUIP report, “OS has stated that producing data in a more rudimentary form involves more cost where that data is generalised from higher specification unrefined data. Our view is that such data should be produced and priced to reflect the costs of its production.”

¹⁷ Paragraph 6.22, The Commercial Use of Public Information, Office of Fair Trading, December 2006.

¹⁸ See <http://www.ordnancesurvey.co.uk/oswebsite/business/copyright/docs/D03800.pdf>

¹⁹ Paragraph 6.43, The Commercial Use of Public Information, Office of Fair Trading, December 2006.

²⁰ ECJ Case C-418/01 IMS Health GmbH & Co OHG v NDC Health GmbH & Co KG [2004] ECR I-5039

²¹ The national interest was defined in NIMSA as having three components:

- “1. The public interest arising from the mapping of areas which would not otherwise be mapped if the judgement was made solely in terms of revenue generated by sales of that mapping alone.
2. The benefits of having national consistency of content, currency, style and manner of mapping which is dictated by needs other than those of the local market.
3. The inescapable requirement for the creation or maintenance of the underpinning infrastructure of the mapping (notably geodetic framework), which is widely used by other bodies and by the public and where charging for use is either inappropriate or impossible (such as the use of the National Grid).”

would only agree to a one year licence term for this data. Ordnance Survey itself would have been able to meet the requirement for a four year supply contract as it owns the source information and would have no such contractual constraints.”²²

4.33 As part of the CUPI study, we received numerous complaints in relation to OS licensing and pricing of its information. The majority of these complainants requested their details to be kept confidential, partly as they feared for their supply relationship with OS, as there were no alternative suppliers available.

4.34 Our business survey conducted for the study sought to quantify the instances of problems in the supply of public sector information. The full results of this survey can be seen at Annex B. OS was the supplier mentioned most frequently in relation to problems and, proportionately, it was the third most complained about public sector information holder. Thirty-one per cent of those that have business arrangements with OS reported problems in our survey. This is likely to underestimate the scale of overall problems as the survey was addressed to existing users. We heard from some businesses which wanted to license data from OS but had been unable to do so. We would not be in a position to identify all those in this position.

CONCLUSION

4.35 The lack of appropriate boundaries between OS’ roles as a holder of base geographical information and as a commercial operator is the key to many of the competition issues that we identified in our report in 2006. Consequently, there is a compelling case for the implementation of the structural separation of unrefined and refined information within OS as identified in the CUPI report.

Q2 In 2002, the Select Committee also identified “a clear need for some form of independent arbitration so that conflicts could be resolved” between OS and its partners and customers. To what extent has that position changed in the intervening five years?

4.36 Even with the new measures that have been put in place since 2002, there are still highly significant conflicts between OS, its customers and potential customers. Therefore, there is a continuing need for a form of arbitration that has the ability and powers to resolve such conflicts.

4.37 In the last five years, the Re-use of Public Sector Information Regulations 2005 have been implemented, OPSI and APPSI have been established and the Information Fair Trader Scheme instituted by OPSI. These changes have helped to clarify the procedures for considering complaints and the expectations on public sector information holders, although as noted in the CUPI report, there are notable shortcomings of these measures.

4.38 Regarding OPSI, we are aware that it has very limited powers and resources and as such is unable to act similarly to the established economic regulators in the UK. In the CUPI report, we noted that:

“We consider OPSI’s resources to be extremely limited and insufficient to meet the objectives that are required for OPSI to be a fully effective regulator.”²³

4.39 We recommended that OPSI should have an increased role in this area, through developing the Information Fair Trader Scheme to test public sector information holders rigorously for compliance with our recommendations relating to equal access to unrefined information, with detailed scrutiny of how charges are determined, and whether proportionate cost accounting systems and appropriate accounting separation are in place.

4.40 In addition, we noted that OPSI has very limited powers with which to address conflicts and disputes. We were aware that primary legislation in this area was unlikely and sought a proportionate recommendation to ensure that the power available to OPSI is made more explicit. We recommended that:

“OPSI amends its published procedures for investigating complaints under the Re-use Regulations to provide explicitly for the option of (a) revoking a delegation of authority in full or in part for Crown bodies, and (b) recommending to the parent department, in appropriate circumstances, that a PSIH [public sector information holder] is divested of its refined information operation.”²⁴

4.41 We provide further details regarding our assessment of the effectiveness of the current complaints and redress systems for public sector information holders in Chapter 8 of the CUPI report at Annex A, as well as further information on the manner in which we sought to increase the capability and resources for OPSI.

4.42 Since publication of the CUPI report, APPSI has determined that the Re-use Regulations apply more narrowly than OPSI’s interpretation.²⁵ APPSI also provided clarity over the interpretation of Regulation Five of the Re-use Regulations, noting the exclusion from the Re-use Regulations of documents

²² Box 6.4, The Commercial Use of Public Information, Office of Fair Trading, December 2006.

²³ Paragraph 8.58, The Commercial Use of Public Information, Office of Fair Trading, December 2006.

²⁴ Paragraph 8.81, The Commercial Use of Public Information, Office of Fair Trading, December 2006.

²⁵ Office of Public Sector Information Report on its investigation of a complaint (SO 42/8/4): Intelligent Addressing and Ordnance Survey, July 2006.

where, “. . . a third party owns relevant intellectual property in it.”²⁶ APPSI provided a determination concerning the word, “relevant” in the above. The determination may be interpreted to imply that many of OS’ products could be excluded from the Re-use Regulations.

4.43 This means that there may be fewer sanctions available to address problems with OS and as such, this highlights the need for OS to make its unrefined information available to businesses and other public sector bodies in a non-discriminatory manner.

4.44 APPSI made its determination in response to a complaint from Intelligent Addressing, which APPSI believed should have been considered by the OFT under the Competition Act 1998. When the complaint was first received by OPSI, OPSI discussed it with the OFT under the Memorandum of Understanding between the two bodies. OFT and OPSI was agreed that OPSI should investigate the complaint as it involved licensing issues which fell into its area of expertise. Furthermore, the OFT was conducting the CUIP study which was seeking to address similar issues and took the view that this should be completed before we considered a complaint of this nature under the Competition Act.

4.45 We also make two additional points about the positions of OPSI and APPSI regarding their roles in independent arbitration. First, OPSI is unusual in being subject to ministerial control, which does not give it the independence of the economic sector regulators in the UK. There may be circumstances where such a position affects the credibility of OPSI’s independence in decision making and thus may represent a conflict of interest. However, we do not have evidence that this is more than a theoretical concern. Second, APPSI has a dual role as both a review body for complaints and an advisory body for government. Again, there is a possibility of a conflict of interest which could call into question the credibility of the independence of APPSI to review complaints. As there has only been one complaint reviewed by APPSI to date, it is difficult to conclude at this time whether this is more than a theoretical concern.

Q3 What is your assessment of the UK Geographic Panel’s operation since its introduction in 2005?

4.46 We do not consider the OFT to be best-placed to comment on this question, as the CUIP market study did not consider the geographic panel explicitly and we did not consider there to be a significant role for the panel in addressing the competition concerns we identified.

Q4 The Select Committee’s predecessor, in recommending in 2002 that an advisory panel on geographic information should be created, suggested that it should have at least three members, including the Association for Geographical Information, OS and a private sector representative. Is the current panel’s membership sufficiently balanced with three private sector representatives among its 12 members?

4.47 The composition of the panel is unlikely to remedy the concerns we identified. We would like to see a division between the unrefined and refined operations of OS, in the interests of economic efficiency.

Q5 In a memorandum to the Committee during its recent inquiry into DCLG’s Annual Report 2006, the Government said that the ending of NIMSA means “there is no distinction for OS between public service and commercial activity”. If that is the case, should the head of a commercially active organisation continue, ex officio, to be official adviser to Ministers on “all aspects of survey, mapping and geographic information”?

4.48 If the OFT’s recommendations from the CUIP report were implemented in full, there would be appropriate separation between the unrefined and refined information businesses and activities within OS. Consequently, in such a situation, it would be unlikely that serious competitive harm could be caused by the role outlined in the question.

Q6 Some OS competitors allege it is able to use its position as public sector information holder to compete unfairly, either by imposing over-stringent and costly licence conditions or by developing products of its own in direct competition with theirs but without the associated information licensing costs. There are further complaints that OS is an effective monopoly, preventing fair and transparent competition in the geographical information market. What is your view of these suggestions?

4.49 We address the particular points made in the above question in order.

4.50 OS imposes over-stringent and costly licence conditions: This was a key problem that we found during our market study. In Chapter 7 of our report we made four specific recommendations regarding,

²⁶ Paragraph 1.11, Review Board of APPSI Report in relation to requests by Intelligent Addressing Limited and Ordnance Survey to review certain recommendations made in the Report of the Office of Public Sector Information of 13 July 2006 relating to a complaint by Intelligent Addressing Limited (SO 42/8/4). 30 April 2007.

“addressing overly restrictive terms”, as well as recommendations to address, “concerns about quality of service”. In Chapter 8, we made recommendations to address concerns with complaints procedures within information holders, as well as covering issues of compliance and redress mechanisms.

4.51 Regarding the cost of licences: We note that OS, like other Trading Funds, has a target to recover its full costs and make a positive return to HM Treasury. We made recommendations (Chapter 7 of the CUIP report at Annex A) covering the acceptable pricing of both unrefined information (where government funding may be provided for some public sector information holders) and refined information where provision in competitive markets is to be expected. These recommendations will still allow information holders such as OS to recover their costs in an efficient manner, while protecting businesses and ultimately consumers from unduly high prices and anti-competitive cross subsidisation.²⁷

4.52 OS develops products of its own in direct competition with others: We received some allegations from businesses that information holders had used information about planned new products to develop their own products. Further information in relation to this point can be seen in paragraphs 6.37 to 6.42 above, and the recommendation following paragraph 7.26 of the CUIP report at Annex A.

4.53 In regard to competition more generally between OS and other refined information providers, as stated earlier in the context of OS’ licence policy, OS seeks to avoid competing with those that it licenses to use its information. This issue is explained in paragraphs 4.25 to 4.29.

4.54 Whether OS is an effective monopoly preventing fair and transparent competition in the geographical information market: As stated above, we agree that OS is currently a monopolist and that its actions are preventing competition and innovation in the market. The lack of accounting separation and internal charging means that OS is not transparent and this is further restricting competition and innovation in the market.

4.55 Our recommendations would isolate and restrict OS’ monopoly power. The provision of unrefined information could then be established on an equal basis between the refined business of OS and its potential competitors. This would allow effective competition between developers of refined information products to the benefit of consumers and efficient businesses.

4.56 In addition, maintaining OS as a monopolist for unrefined information has the benefit of allowing OS to continue to recover its costs fully from the charges it levies for its unrefined information products. This would alleviate concerns regarding shortfalls in income that have been mentioned in relation to our recommendations.

Q7 How does OS’ licensing and pricing structure affect local authorities?

4.57 In response to this question, we note that the licensing and pricing difficulties experienced by OS customers in our study related to customers in both the public and private sector including Local Authorities.

5. OTHER INFORMATION

The benefit from addressing concerns with public sector information

5.1 As part of our report, we commissioned economic consultants, DotEcon Ltd, to produce estimates of the current value to society from public sector information and the potential growth in value if current problems in supply were addressed. DotEcon estimated the value of the sector to be £590 million annually, with the estimate of the current problems in supply costing the economy approximately £500 million annually.

5.2 OS attempted to ascertain the elements of these figures that relate exclusively to their organisations. Given the manner in which DotEcon undertook this work, using estimation on a sector wide basis, this attribution to individual organisations was not possible on an accurate basis.

5.3 Furthermore, detailed information regarding the relative extent of problems concerning individual public bodies and the good and bad examples of behaviour among individual public bodies (including specific restrictions on competition as well as best practice organisations) were not considered explicitly in these estimates. Therefore, attempts by information holders to divide the detriment between organisations based on rudimentary principles may be highly misleading regarding the extent of problems attributable in practice to a particular organisation.

²⁷ Cross subsidisation refers to the practice of using high prices for unrefined information to allow lower prices for refined information. These low refined information prices can prevent effective competition from private sector providers which are unable to match such prices as they only produce refined information.

Inclusion of Annex D—International Case Studies

5.4 We have chosen to supply Annex D with this response, even though it is not referred to specifically above, as it indicates that problems regarding suppliers of public sector information, including mapping agencies, are not unique to the UK. Furthermore, this annex provides support for our view of the importance of establishing equal treatment, both in pricing and terms of licences between the public sector information holder and private businesses to ensure competition can thrive to the benefit of the whole economy.

6. LIST OF ANNEXES (NOT ATTACHED)

Annex A: The Commercial Use of Public Information—report of the market study, December 2006.

Annex B: CUPI Report: Survey of businesses that use public sector information

Annex C: CUPI Report: UK Case Studies

Annex D: CUPI Report: International Case Studies

Memorandum by Intelligent Addressing

INTRODUCTION

We welcome the decision by the Communities and Local Government Committee (“the Committee”) to conduct a short follow-up exercise to check the progress of recommendations made in its 10th report of Session 2001-02 (HC 481) relating to Ordnance Survey.

ISSUES OF CONTEXT

Intelligent Addressing Limited (IA)

IA is a specialist private sector SME employing recognised experts in addressing and data management. It was created in 1999 to work in a public/private partnership with the Improvement & Development Agency (IDeA), a subsidiary of the Local Government Association, helping local government create the National Land & Property Gazetteer (NLPG).

The National Land and Property Gazetteer (NLPG)

The aim of the NLPG is to improve service delivery to citizens. It has become one of the most successful modernizing Government initiatives within local government.

The NLPG improves service delivery by creating and maintaining a master list of references for all land and property throughout England & Wales. The process by which the NLPG is updated improves the currency and completeness of local authority address data and facilitates the linking of local data (eg for call-centres and social services) through a shared address referencing system.

The NLPG is already proving its value to local government and the emergency services in their interactions. It is potentially also of great value to central government and the private sector. At present it cannot be licensed for use outside local government on what IA consider to be fair and reasonable terms because an element of NLPG data was originally derived from Ordnance Survey.

SUMMARY

Q1 Boundary definition?: If anything, the boundaries of OS’s activities are now less clear than they were five years ago because the role of OS was widened and blurred in their Framework Document (2004) which also drew no distinction between their commercial activities and public service

There needs to be a clear definition of OS’s operating boundaries. Separation of their data collection activities (“upstream”) from those which are “commercial” (“downstream”) is vital if other operators are going to be permitted to work successfully in this market-place.

Q2 Independent arbitration?

The government wants to encourage the growth of the UK’s knowledge economy as a means of sustaining international competitive advantage. Given the central role of PSI to this objective, it needs to attract re-users of PSI as well as investment and ideas for new services. These things will not occur unless the “rules” of engagement are clear, fair and enforced. In our experience none of these things are currently the case.

Q3 *GI Panel Assessment?*

It is difficult to make any assessment of the GI Panel's operation since it was introduced two years ago, primarily because little of any substance has been published. However, we consider that Government shows few serious signs of appreciating the strategic importance of Geographic Information to its operations and that, until it does so, the work of the Panel, whatever it is, will remain undervalued.

Q4 *GI Panel membership?*

The membership of the Panel should reflect its remit which we argue needs reconsideration. If it is to serve as an independent advisory body to government it needs a well-respected and independent Chair and more balanced representation, particularly from the private, academic and local authority sectors.

Q5 *Role of GI Advisor to Government?*

It is surprising that such a clear conflict of interest, which has been so well sign-posted over so many years, has been allowed to endure by Ministers, implying a lack of understanding of the scope of OS's current commercial remit and influence.

Q6 *OS competitive position?*

OS is the only source for much of GB's essential geographic reference data. It makes that data available on terms which do not encourage competition, stimulate an active third-party GI "Value-Added" supplier market or encourage wider GI uptake. OS licensing terms are perceived as restrictive and complex and their prices high and inflexible. Nor does the Treasury benefit from the current OS business model which appears to have resulted in an overall deficit on normal operations over the past seven years whilst prices of their key products have remained broadly static.

BACKGROUND

1. Over the past six years there have been many government policy statements about the importance of the public sector improving its efficiency and service delivery, Sir David Varney's being the most recent.

2. However, at least one crucial part of the public sector has a remit which currently cuts across the grain of these two government objectives. The questions posed by the CLG Select Committee about Ordnance Survey are aimed at the heart of this conundrum.

3. On the one hand the government seeks collaboration across Departments, "partnership working", the sharing of core data (where appropriate), and joined-up access to government services for citizens, and on the other hand it seeks to encourage cost recovery on (a few) pivotal parts of Public Sector Information (PSI) which prevents these things happening quickly, easily and efficiently.

4. Geographic Information (GI) is a central part of virtually all government information, although not always recognised as such. Virtually all government services are delivered to a "place"; and yet Ordnance Survey, a monopoly supplier of many key datasets relating to place, is required to operate on a commercial basis and thus imposes barriers—through restrictive licensing terms and high cost, the value of which cannot always be measured precisely—on re-users of their data in government and the private sector.

5. There is a further conundrum. On the one hand government wants to encourage the private sector to innovate, develop and provide choice and wealth to the economy and on the other hand, in a crucial piece of the information infrastructure, it has implemented a policy approach which encourages the expansion of its own monopolistic commercial supplier, inevitably a disincentive to the private sector as the competitive playing-field appears far from level.

6. We believe there are several reasons why such obvious conundrums have been allowed to endure:

- first, the issue is not a vote-winner. It is seen as an "administrative" matter of "process" and relatively low priority, and the consequences are normally passed for resolution by those with the power to question and initiate change in the public sector to those who have neither;
- secondly, the issue relates to a policy, which emanates from Treasury, but with implications across other Departments. There is no single Minister responsible; and
- finally, certainly in the case of Ordnance Survey, some of the potential and necessary changes, directly threaten what we consider is their overly-comfortable business model. It is too easy for OS to argue (even if potentially fallaciously) that there will be a net increase in cost to government or a diminution in the quality of map data if the current policy is altered.

Q1 The “need to define the boundaries of Ordnance Survey public service and national interest work.” To what extent has the position changed in the intervening five years? How clear are the boundaries between the OS as holder of base geographical products and as a commercial operator?

Q1.1 If anything, the boundaries of OS’s activities are now less clear than they were five years ago because the role of OS was widened and blurred in their Framework Document (2004). Specifically, the Document failed to clarify and define the generic area of OS operations: most nationally important datasets have a crucial geospatial element but OS has a remit to manage “nationally important geospatial datasets” but clearly not all such datasets.

Q1.2 The recent DCLG response that there is “no distinction between public service and commercial activity for Ordnance Survey” does not offer further clarity. If true, it even raises the possibility that the commercial activities of OS equate to their public duty. This could put the OS beyond the reach of the Office of Fair Trading and Competition Law.

Q1.3 Given the position of OS in the market-place and the scope of its remit, it might be expected to have achieved a substantial net revenue growth since it became a Trading Fund. However, growth in normal “external” operating turnover (excluding the AA settlement, NIMSA contract and reorganization grants) appears to be about 5% pa since 31/03/1999 whilst product prices (except for AddressPoint) do not appear to have fallen. Excluding the AA settlement (as an exceptional windfall) but including NIMSA and reorganization grants, OS’s accounts indicate a cumulative operating deficit for the seven year period (to 31 March 20) of £433,000.

This appears to us to be a disappointing performance and well below the general rate of growth of the information industry; perhaps an indication of the difficulty that the public sector encounters when expected to act entrepreneurially.

Q1.4 It is our experience that OS is both commercially aggressive and expansionist (although their results do not imply much success at either) and that their current remit encourages them to be both which acts as a brake on wider market development. There needs to be a clear understanding of OS’s operating boundaries. A proper separation of their data collection activities (“upstream”) from those which are “commercial” (“downstream”) is vital if other operators are going to be permitted to work successfully in this market-place.

Q2 The “clear need for some form of independent arbitration so that conflicts can be resolved between OS and its partners and customers.” To what extent has the position changed in the intervening five years

Q2.1 Since the DTLR Sub-Committee published its recommendations in 2002, the Office of Public Sector Information (OPSI) has introduced the Information Fair Trader Scheme (IFTS), the Public Sector Information Regulations (PSI Regs) have become law, and the Advisory Panel for Public Sector Information (APPSI) has been formed as an advisory and further review body (on the PSI Regulations).

All these have been tested by our company in the past two years. Our conclusion is that their processes do not offer clarity or certainty of redress because of a lack of empowerment and resources amongst the appropriate authorities.

Q2.2 It needs to be understood that if government organisations are encouraged to perform commercially then they will inevitably defend their business models and commercial practices from attack by potential competitors. The response to Parliamentary Questions have revealed that OS employ 6 in-house lawyers and paid over £500,000 in legal fees in 2005/06, a total overhead which substantially exceeds OPSI’s entire annual budget.

Q2.3 Therefore, if the government is to self-regulate (which it tries to do through OPSI), then such self-regulation must be capable and willing to deal with public sector bodies which are reluctant to conform. Government is suspicious of self-regulation in the private sector and should bear its own concerns in mind when assessing the best way forward.

Q2.4 The government wants to encourage the growth of the knowledge economy as a means of sustaining international competitive advantage. Given the central role of PSI to this objective, it needs to attract re-users of PSI as well as investment and ideas for new services. These things will not occur unless the “rules” of engagement are clear, fair and enforced. In our experience none of these things are currently the case.

Q3 What is your assessment of the UK Geographic Panel’s operation since its introduction in 2005?

Q3.1 We consider that Government shows few serious signs of appreciating the strategic importance of Geographic Information to its operations and that, until it does so, the work of the Panel, whatever it is, will remain undervalued.

Q3.2 It is, nevertheless, difficult to make any assessment of the GI Panel’s operation since it was introduced two years ago, primarily because little of any substance has been published. The Minutes are sparse and do not indicate clear progress towards the completion of a well-defined programme of work.

Q3.3 We do not believe the remit of the Panel was drafted by ODPM in the way that had been anticipated by the DTLR Sub-Committee, since the Director General of OS retained her role as GI Advisor to Government (the Panel has only some vague and potentially irrelevant medium to long-term remit).

Q3.4 This lack of a meaningful and valuable role is one of the Panel's clear weaknesses. The view of many outside the Panel is that it is currently a vehicle to give legitimacy to OS's own strategy. The position needs fundamental review.

Q4 *Is the current panel's membership sufficiently balanced with three private sector representatives among its 12 members?*

Q4.1 The membership of the Panel should reflect its remit which, in Q3, we suggest needs fundamental review.

Q4.2 If, for example, it was to become an independent advisory body to Government then we would suggest it should recruit an independent and well-respected Chair and have a wider representation amongst its members, especially from local government, the public utilities, the private sector and academia.

Q5 *Should the head of a commercially active organisation continue, ex-officio, to be official adviser to Ministers on "all aspects of survey, mapping and geographic information."*

Q5.1 No. The Select Committee should be clear that the OS, as it currently operates its business model, is perceived by the majority of the GI community as an entirely commercial organisation having no restraining remit of "public duty".

Q5.2 It is surprising that such a clear conflict of interest, which has been so well sign-posted over so many years, has been allowed to endure by Ministers. This implies a lack of understanding of the scope of OS's current commercial remit and influence.

A perception of a conflict, rather than actual evidence of abuse, is all that is required for a process to appear disreputable.

Q6 *Does OS use a monopoly position to prevent fair and transparent competition in the geographical information market?*

Q6.1 OS is the only source for much of GB's essential geographic reference data. It makes that data available on terms which do not encourage competition, stimulate an active third-party GI "Value-Added" supplier market or encourage wider GI uptake. OS licensing terms are perceived as restrictive and complex and their prices high and inflexible.

Q6.2 In our opinion, OS licensing terms are designed to protect the current OS business model which is risk averse but puts pressure on OS to make a financial surplus. The model places OS at the centre of the supply chain, focusing on achieving benefit for OS rather than considering primarily how the UK can best secure its future geographic information needs.

Q6.3 At present no third party supplier can access the OS base data except through the acquisition of OS products which we consider to be of "added value".

Q6.4 We believe that OS needs to be split in two: an upstream producer/ procurement activity to meet public sector requirements (ie to maintain the national geospatial database) and a downstream commercial activity. The producer activity would licence data (which it produces or procures) at cost (eg plus 5%) to any third party on simple and homogenous terms. In this model OS "commercial" would become a third party supplier.

Q6.5 It is worth noting that, in OS's 2000 accounts, the National Audit Office reports that it had been informed by OS that the cost of maintaining the National Geospatial Database was £28 million pa, some 30% of OS's overall cost base at that time. We are not aware of any reason to suggest that the proportion of OS's costs relating to data maintenance has increased since 1999 whilst the proportion of staff engaged in data maintenance appears to have declined.

This suggests that a significant cost reduction might be achieved in the supply of base geographic reference data if it were to exclude the apparently expensive licensing, marketing, commercial management and administration overheads which, in our view, should be transferred to OS "commercial".

Memorandum by the Locus Association

INTRODUCTION

The Locus Association welcomes the decision by the Communities and Local Government Select Committee to conduct a follow-up exercise to check the progress of recommendations made in its 10th report of Session 2001–02 (HC 481) and is grateful for the opportunity to submit our views on the questions posed in this new inquiry.

ABOUT LOCUS

The Locus Association was launched in January 2006 and its President is a former Director General of the OFT and Oftel, Sir Bryan Carsberg. The Association exists to raise awareness of, and promote the development of, a healthy and competitive private sector in relation to PSI. Locus acts as a forum for exchange of information, keeps its members up to date with latest policy developments, and provides advice and guidance. Our members recognise the potential of PSI, but also the benefit of uniting to address some of the challenges and pooling resources to meet them. It is worth noting that the particular nature of the PSI market structure, where individual private sector organisations have limited influence, lends itself to the development of a trade body.

Locus's members all have a pivotal interest in PSI policy and the actions of PSIHs; some members are primarily involved in the purchase of raw data and value addition, whilst some members also compete directly with PSIHs in the provision of value-added products and services.

BACKGROUND TO OUR SUBMISSION

The importance of Geographic Information:

The Ordnance Survey (OS) believes that its maintenance and management of the National Geospatial Database underpins some 10% of the UK's GDP.²⁸

In 1999, PIRA estimated the value of the GI element of PSI across the European Community at Euros 35.8 billion.²⁹ A further study by the EC in 2004 suggested 80% of PSI was geographically referenced.³⁰

Whilst the exact statistics may be debated, the all-pervasive importance of "location" to a modern economy is well-recognised. Virtually all services, whether those of government or the private sector, relate to a location.

Ordnance Survey's market position:

OS commands a central and (in some of the key information building-blocks) monopolistic position in the supply of geographic information. A third party could not economically justify recapturing most of the data collected by OS over many years of partially state-funded investment.

There are many difficulties that the Trading Fund model must confront and OS's primary defence seems to be draconian licensing terms. Protective licensing, especially where it can be segmented between different markets, is a complex, expensive and potentially unproductive process to manage. It can also be very contentious. There is the unfortunate prospect of OS being unable to offer the licensing terms required by another part of government because of "precedent", affecting the public sector's operational efficiency to the detriment of all,³¹ and of OS developing products to compete with those of other public sector bodies.³²

Because of the subject matter, its trusted brand image, position within government, and monopoly status, the management of OS is in a position either to offer substantial added benefits to the UK economy or to do it considerable harm by restricting innovation, choice, efficiency and enterprise. The Treasury's direct financial gain is not obvious. Since 31 March 1999, OS has paid £3.4 million in dividends whilst receiving NIMSA and reorganisation grants totalling £117 million, excluding licence fees paid to OS by other parts of the public sector.

²⁸ Letter from the Director General to the Cabinet Office eGovernment Unit 02 February 2006.

²⁹ "The UK government investment in public sector information for the year 2000/1 was Euro 1.25 billion with around 57% of this total being in the acquisition of GI-related services (mapping, land registration, meteorological, environmental and hydrographic data). Cost recovery was around Euro 1.1 billion". Commercial Exploitation of Europe's Public Sector Information. Final report for the EC, PIRA International (2000)

³⁰ "Knowledge is a source of competitive advantage to the information economy. For this reason it is economically important that there is a wide diffusion of public information Currently geographic and meteorological information have the greatest economic potential. . ." Digital Broadband Content: Public Sector Information and Content: Working Party on the Information Economy, Directorate for Science, Technology and Industry (30 March 2006).

³¹ This is believed to be the reason why the initial PGA re-procurement, led by CLG in 2006, had to be withdrawn.

³² As several observers have indicated is currently the case with OS's Master Map Address Layer 2 being developed to "compete" with Local Government's "National Land & Property Gazetteer".

SUBMISSION SUMMARY

This paper argues that Ordnance Survey (OS):

- (i) has become a very commercially focused organisation,
- (ii) controls a monopoly supply of information which is
- (iii) of key importance to the national economy
- (iv) holds a privileged position in government, the effects of which are not properly recognised or controlled by government.

These factors, when taken together, create significant difficulties for both the private and public sectors. We believe that they reduce product choice and opportunity, innovation and enterprise, and can increase costs and impede effective service delivery to the citizen. The questions posed by the Committee are answered against this background.

Tensions, which were making their early appearance in 2002, have since become more apparent. OS's increasingly aggressive commercial approach has thrown the problems arising from their current business model into sharper relief and consequently made the recommendations of the Committee's predecessor in 2002 even more relevant today, especially when taken together with those of OS's final Quinquennial Review and the recent Office of Fair Trading (OFT) market study into the commercial use of public sector information (CUPI).

The following are summary answers to the Committee's questions, which are expanded upon in the main body of this submission:

- Q1 The boundaries between the OS as maintainer/producer of base geographical data and as a commercial product vendor remain as opaque as they were in 2002. However, the OS's business approach in the intervening period has aggravated the position.
- Q2 Our own conclusions are that any process of arbitration should be quick, low cost, transparent, fair, properly enforceable and enforced. This is not the case at present.
- Q3 It is difficult, from the information available, to be encouraged by the progress of the GI Panel towards fulfilling its remit. Furthermore, its current level of secrecy creates distrust, potentially quite unnecessarily. At present, the GI Panel does not seem to be viewed as a serious force for positive change either within government or outside it.
- Q4 We consider that currently only two members are from the private sector and that the balance of the Panel and its remit needs to be re-considered.
- Q5 If GI is important to government, and we believe it is essential, then its source of advice should be entirely impartial and not capable of being tainted by accusations of partiality. This is not the case at present. Such accusations, based on real or imaginary issues, are avoidable. The commercial conflicts of interest would not be acceptable in the private sector and should not exist in government. They risk impeding and confusing the smooth flow of government operations.
- Q6 In our opinion, OS uses its monopoly position, intentionally or unintentionally, to prevent fair and transparent competition in the geographical information market. OS cannot have a monopoly of good ideas. Our view is that OS's actions, especially over the past six years, have had the effect of discouraging investment and innovation in the UK in the vital GI area.

LOCUS RESPONSE TO THE CLG SELECT COMMITTEE INQUIRY

Q1 *The "need to define the boundaries of Ordnance Survey public service and national interest work." To what extent has the position changed in the intervening five years? How clear are the boundaries between the OS as holder of base geographical products and as a commercial operator?*

The OS Framework Document

Taken at face value, the Framework Document's description of OS's remit is so broad that it could currently include much of the work of HM Land Registry, the Environment Agency and others. Criticised at the time, the document, in our opinion, paved the way for a more expansionist commercial approach to product development and licensing by OS.

The concept of "Public Task" is nowhere clearly differentiated from OS's commercial activities. Nor can we find reference to any "Public Duty" requirements in the Framework Document or other relevant documents (eg their Trading Fund Order). Conversely, the importance of OS making a financial surplus is emphasised.

The recent response by the CLG to the Committee's enquiries (Third Report of 2006-07, HC 106; Ev 105) does little to clarify the position.

The OS

The OS take their role as guardians of Crown Copyright seriously. The OS management is ambitious, able and now largely recruited from the private sector. It is thus unsurprising that the OS Board appears to interpret its remit primarily in commercial terms and pursue that remit with vigour, generally unfettered by the restraint of Public Duty. Because of their position in government, it is relatively easy for OS Directors to assume their commercial endeavours are de facto also in the national interest.

Statskontoret—The view from Sweden

The Statskontoret, a Swedish government review board, concluded of their public bodies with commercial remits (including their mapping agency):

“Many [Trading Funds] also have conflicting objectives within their own organisations that may result in their not knowing which objectives to work for. This often culminates in the profit motive taking precedence over the need to promote various national interests and the aim of competing on the market on equal terms.”³³

“Commercial activities pursued by agencies alongside the exercise of official authority and performance of other public functions give rise to dual and conflicting roles. When the agency is both a purchaser and a producer of the service concerned it may be difficult for it to act neutrally in relation to other market operators. There is also a risk of cross-subsidisation and competition-curbing underpricing between grant funded official functions and commercial work in a competitive environment.”³³

APPSI view

In its recent review,³⁴ APPSI concluded that OS’s “Public Task” was in the development and maintenance of mapping data and that the sale of many commercial products derived from that data fell outside its public task. The APPSI arguments, framed from a legal standpoint, were detailed.

The APPSI view has far-reaching effects which are unexpected and worrying. For example, if generally accepted (and it will be difficult to ignore), most current OS products would appear to fall beyond the constraining scope of the PSI Regulations; National Interest Mapping Agreement (NIMSA) funding might become construed as State Aid, being government granted funding to OS without public procurement for the collection of data which can only be obtained by third parties through the acquisition of OS commercial products.

APPSI recommended that PSI Holders should reach agreement with OPSI as to which products and services constitute their Public Task and were thus covered by the PSI Regulations. Whilst this may provide a way of defining the coverage of the PSI Regulations it could also be construed as PSI Holders “marking their own exam papers”.

The OFT View

In its recent market study, the OFT drew attention to a substantial number of concerns relating to OS’s commercial approach and commented:

“One of the more noticeable factors is the way in which previous attempts by regulators and other bodies to influence the behaviour of OS have met with resistance.”³⁵

Without clear boundaries to their operational remit but nevertheless with a clear commercial imperative, the OS behaviour should not have been unexpected.

Conclusions

The boundaries between the OS as maintainer/producer of base geographical data and as a commercial product vendor remain as opaque as they were in 2002. However, the OS’s commercial approach has become more aggressive in the intervening period and this makes the consequences more serious.

The management of mapping and any other geospatial data which OS may argue might be “nationally important” can currently be designated to be within the scope of its remit and can be exploited for commercial benefit subsequently. This is a key risk factor for any new enterprise considering investment in the GI sector.

OS carries out three streams of activity although these are, to the outside world, indivisible:

- (i) maintenance of base topographic mapping;

³³ Competition at the Public/Private Interface: Swedish Agency for Public Management (Statskontoret) (2005).

³⁴ Advisory Panel for Public Sector Information (APPSI)—Review of OPSI’s recommendations 30 April 2007.

³⁵ The Commercial Use of Public Information (CUPI)—OFT, December 2006. para 7.45, page 136.

- (ii) distribution of OS products under licence; and
- (iii) exploitation of commercial opportunities.

The OS work maintaining the base-map feeds OS commercial products. Third-parties cannot access base topographic mapping data except through the acquisition of OS commercial products.

For example, the aerial photographs required for the maintenance of the base topographic map are also sold as a separate commercial product (potentially creating a product cross-subsidy to the benefit of OS and the detriment of private sector companies specialising in aerial photography). Addresses collected from the Royal Mail, although not strictly required for the maintenance of the base map, have grid-references appended by OS and are sold as a map-related commercial product. As can be easily appreciated, it is a common perception that OS is taking advantage of a privileged commercial position.

A continuing lack of definition of OS tasks and of clear boundaries between tasks inevitably deters third party innovation and restricts choice. Locus believes that the boundaries between these classes of activity need to be clearly drawn and, once drawn, they should not change without extensive consultation.

The inequity of the current situation, particularly given OS's monopoly position, risks causing conflicts which are potentially damaging to OS itself; if not in commercial terms then in reputational ones. The status quo may appear superficially attractive to OS management but it is like navigating from A to B without charts and a tidal atlas.

Q2 The "clear need for some form of independent arbitration so that conflicts can be resolved between OS and its partners and customers." To what extent has the position changed in the intervening five years

The current options

In the case of conflict, a potential or actual re-user of OS data has five possible courses of action.

1. Take no action

Where the re-user's business is already dependent upon an existing supply of data from OS there are strong and obvious arguments not to complain formally in order to protect an existing relationship with a monopoly supplier. The Committee's predecessor acknowledged this possibility and it remains true today. We believe that there have been only three formal complaints against OS in the intervening period.

It should be noted, however, that the OFT research recorded that 31% of OS re-users had experienced problems with OS in the past three years, a total of 36% of all PSI re-users that had reported problems amongst the 15 largest UK PSI Holders.³⁶ This is a remarkably high proportion.

2. Action under IFTS

The Information Fair Trader Scheme (IFTS), essentially an accreditation scheme, covers OS because it has delegated powers to license Crown Copyright.

Under the terms of the IFTS, if OS rejects a complaint, the complainant may appeal to OPSI. However OPSI, although the "Regulator", has limited powers of enforcement. If it finds in favour of the Complainant, OPSI may be deterred from action by the fact that its powers are only "nuclear" (essentially to remove the delegation of Crown Copyright licensing from OS).

OPSI's position as part of National Archives (now part of the new Ministry for Justice) neither places it in a strong position to enforce its findings nor to bring effective pressure to bear for a change of approach by OS. Conversely, as an independent non-Ministerial government department, OS appears to be well-placed to resist pressure from OPSI.

3. Action under the PSI Regulations

The PSI Regulations are narrower in their application than the IFTS and have the force of law but exclude matters which are not part of a PSI Holders "Public Task". This makes the clear definition of Public Task all the more essential. Data which includes third party copyright is also excluded. Sensible application of either exclusion can enable a PSI Holder to argue that their PSI is not subject to the PSI Regulations.

Whilst OPSI, also the initial appeal body under the PSI Regulations, may choose to interpret the Regulations on the basis of their policy-intent, the subsequent and final appeal body, the Advisory Panel for Public Sector Information (APPSI), must apply a purely legalistic interpretation. This can create a situation where the appeal body of first instance can review a case on a different basis to that of the final review body and come to different conclusions based upon the same information.

³⁶ OFT CUIP Market Study, Appendix B p 30.

4. Apply to the Office of Fair Trading

The OFT has limited resources and is reluctant to intervene in cases which do not fall within narrowly defined priority areas. The cost of applying to the OFT is significant.

5. Action in the Courts

Taking action in the courts to resolve anti-competitive abuse means, in practice, taking action against government. This requires deep pockets, great patience and a willingness to face the uncertainties of a complex area of law.

A member's recent complaint

One Locus Member, Intelligent Addressing (IA), brought one of the first complaints under IFTS and the PSI Regulations. This is not the place to rehearse the details of the Complaint, most of which are in the public domain if the Committee wishes to review them, however there are a number of generic issues arising from the complaint which we believe are relevant.

The essence of IA's complaint was that, in the company's view, the OS had refused to allow the re-licensing of OS ADDRESS-POINT data on fair and reasonable terms, an element of which had been used with OS's prior agreement, in the National Land and Property Gazetteer (the NLPG). This prevents IA and local government from licensing the NLPG to third parties. In the meantime OS had developed and started to market a similar product (Master Map Address Layer 2).

It is Locus's understanding that:

- The IA Complaint was initially lodged in February 2006 but is still unresolved. This is an unreasonable period for such a process;
- Unusually, IA has been willing and able to invest a significant proportion of its revenue to seek resolution. IA's costs have been, however, dwarfed by those of OS defending their position. Whilst this may or may not be a good use of tax-payers' money, it seems unfair that "depth of pocket" should be any factor in resolving PSI disputes;
- OPSI's review of the complaint reached a number of conclusions in IA's favour which it subsequently appeared unable to enforce. Locus' conclusions are that (1) OPSI is both under-resourced and under-empowered and that (2) IFTS currently may only work well with those PSI Holders who are keen to achieve "willing" compliance. This situation will not lead to the maximisation of re-use of PSI;
- The APPSI appeal (from both OS and IA) overturned some of the OPSI findings relating to the PSI Regulations. It is not satisfactory that an appeal body should apply different criteria to the same case.

The IA complaint was watched by many PSI re-users, existing and potential, with interest. The outcome to date, using the complaints process available under both IFTS and the PSI Regulations, has not reassured them.

Conclusions

Although the PSI Regulations have been introduced during the last five years and APPSI formed, in reality, the existing arbitration and conflict resolution processes all have real limitations partly because the OS, singled out for criticism amongst PSI Holders by the OFT market study, is very likely to defend its business model robustly and with the considerable resources at its disposal. Complaining is a time-consuming undertaking, currently with an uncertain outcome.

In its review of IA's complaint, APPSI suggested that its remit should be reviewed and extended and questioned whether an ADR process could be accommodated in the existing PSI Regulations.

Whatever process of arbitration is chosen, it should be quick, low cost, transparent, fair, properly enforceable and enforced. This is not the case at present.

Q3 *What is your assessment of the UK Geographic Panel's operation since its introduction in 2005?*

The Official Remit

The Panel's published remit is:

... to give high-level advice to ODPM Ministers on geographic information issues of national importance for the United Kingdom, in particular:

- To identify the key medium to long-term geographic information issues and advise Government through regular short reports to Ministers.

-
- To encourage more effective, extensive and systematic use of geographic information, led by the example of Government Departments and other public bodies where appropriate.
 - To facilitate a co-ordinated position on potential legislation, both national and international, that might impact on the geographic information market.
 - To promote a coherent approach to the management of geographic information in the United Kingdom.

Subsequently it has been suggested that its remit is to “complement” (?) the advice to Government of the Director General of Ordnance Survey.

The initial concept

The genesis of the GI Panel appears to have come from OS. The suggestion was that it should be a small team of three experts advising Ministers on GI issues “across central and local government”.

The Committee’s predecessor, recognising the potential commercial conflict of interest in OS advising government, recommended that such a panel should be formed *with at least three members* and felt OS’s suggestion had merit.

Unfortunately the then Minister did not use the idea to remove the commercial conflict of interest, leaving the Director General as Official GI Advisor to Government, but making the GI Panel responsible for advice to government for medium to long-term policy issues. Where, therefore do the advisory responsibilities of the Director General of OS end and those of the GI Panel begin?

In a technical field most key issues requiring advice are short-term (0–5 year) ones. In Locus’ view, a key part of the GI Panel’s justification was thus never put in place. Groups do not perform well without a clear and clearly valuable remit.

It is possible that the ODPM opted to form the GI Panel in order to avoid the need to build its own separate GI expertise within government, as suggested in the final OS Quinquennial Review⁴. If this was the case, then the GI Panel was, in our view, an inappropriate vehicle having too little resource and a lack of proper balance and expertise in its constituents.

The work of the Panel

The Panel’s activities appear to the outside world to be shrouded in secrecy. Minutes are generally published several months after a meeting has been held and are skeletal in their detail.³⁷ The Panel does not seem to follow any clear work programme.

- The Chair has stated that the contents of the Panel’s advice to Ministers is not for publication.
- The GI Strategy, a potentially key output of the Panel, was initially constructed by consultants under strict confidentiality limitations.
- The GI Strategy has not met its intended timetable. It is unclear whether it has yet been presented to Ministers or if the Panel has seen a final report. The OS Director General has, however, presented a synopsis of it to key government committees.
- The draft GI Strategy is understood to recommend the adoption of the Digital National Framework (an OS-led initiative). This decision should, in our view, have been opened to more public debate.
- Given the remit of the GI Panel, it would seem appropriate that it should be leading the UK’s response to the INSPIRE initiative. The last set of GI Panel minutes, however, suggests the formation of a separate programme board.
- There is no sign that the government’s approach to GI is becoming more coherent as a result of the work of the GI Panel.

Conclusion

It is difficult, from the information available, to be encouraged by the progress of the GI Panel towards fulfilling its remit. Furthermore, its current level of secrecy creates distrust, potentially quite unnecessarily. At present the GI Panel does not seem to be viewed as a serious force for positive change either within government or outside it.

³⁷ For example the the GI Panel minutes of the meeting (Dec ’06) immediately following the publication of the OFT CUIP Study somewhat surprisingly stated that “there is no evidence of private sector market failure, and therefore no argument for market intervention by government.” No further explanation or justification was offered.

The GI panel has a conundrum at its heart. On the one hand it currently needs the wholehearted co-operation of the OS to work effectively and on the other there seems to be little real benefit to OS, as currently managed, to help to build an alternative and more independent source of advice to Ministers.

Q4 Is the current panel's membership sufficiently balanced with three private sector representatives among its 12 members?

DCLG

Expectation When the Office of the Deputy Prime Minister (ODPM), the predecessor to the Department for Communities and Local Government, formed the GI Panel in April 2005, it stated that the group's composition needed to reflect the broader views of the GI community and added an unexplained rider that this requirement should be balanced with the need to be focused and able to make decisions rapidly.³⁸

The position of the Chair

The Director General of the OS became the first Chair and, after two years, the members of the Panel indicated in April 2007 that "it was not the appropriate time to change the Chairmanship of the GI Panel, given the continuing discussions surrounding the UK GI Strategy."³⁹ Given the commercial interest of the Director General's organisation in the outcome of the GI Strategy, Locus would have considered the reverse to be true.

Membership

The membership of the panel currently consists of the Chair (OS), seven members of central government (not including the Chair), one member from local government, the RICS, the AGI, the Demographic User Group and the Association of British Insurers. The Secretariat is also managed by OS.

Conclusions

Locus are unclear of ODPM's original intentions in creating a larger group than proposed. If the intention of the ODPM was to create a "balanced" group, able to reflect the broader views of the GI community, then Locus consider it should have had the following characteristics:

- An effective Chair, independent of any constituency and respected in government.
- A significant local government representation (say 2–3). Local government are probably the largest users of GI in the public sector.
- A significant central government representation (say 3–4), including Treasury and OS.
- Representation from the utilities (1–2).
- Expert and senior representation from the private sector (say 2–4).
- Academic representation (1–2).

Locus would question whether the AGI and RICS, which have a wide spread of members (for example including many from OS and local government), are representative of the private sector or necessarily best placed to give detailed advice to the GI Panel.

Locus thus consider that currently only two members are from the private sector and that the balance of the Panel and its remit needs to be reviewed.

Q5 Should the head of a commercially active organisation continue, ex-officio, to be official adviser to Ministers on "all aspects of survey, mapping and geographic information?"

The issue

The advisory role of the OS Director General was highlighted by the Committee's predecessor as a potential anomaly and the formation of a more balanced group of advisers was proposed. In Locus' opinion, the formation of the GI Panel (the government response) has failed to address the conflicts for reasons explained under Q3 and Q4 above.

³⁸ GI Panel Terms of Reference.

³⁹ Minutes of GI Panel meeting 3rd April 2007.

The OS Quinquennial Review had already emphasised these potential conflicts and their potential consequences:

“Ordnance Survey has acted as the lead policy advisor on a wide range of GI issues. However, it does so in a situation where, as we have noted, there is an absence of any effective policy making capability elsewhere in government. This is unsatisfactory, because whereas Ordnance Survey is well-equipped to offer advice on technical matters, it cannot reasonably be expected to offer impartial advice on issues affecting its own role or commercial interests.”⁴⁰

In Locus’ view, if the OS was split into a public interest and a commercial component (as may be contemplated) but remained under the same overall management, this would not resolve the conflicts. Government must find a new way of securing unconflicted advice on GI issues, both strategic and technical.

The current risks

Government would not consider appointing its key commercial data supplier from the private sector as its preferred advisor, why therefore should it appoint an equivalent Trading Fund? Is it reasonable to expect a Director of a commercial organisation to give advice to Ministers which may be contrary to the interests of his or her own organisation?

Civil Servants, looking for impartial advice on GI matters, regard OS as having the same moral and commercial ethos as themselves⁴¹, in effect a member of the same club, focused on “Public Task” and “Public Duty”, and subject to the same rules. OS advice within government has the imprimatur of a Civil Servant.

However reality is not so straightforward. OS has been encouraged to become a commercial organisation and has to a large extent become one. It is not widely appreciated in government that, as a Trading Fund, OS has commercial pressures and that its Framework Document imposes no Public Duty upon it. OS thus sits both within the protected curtilage of government and is its main GI data supplier, both supported by (now) indirect funding from the public sector and able to expand in commercial markets.

“Ordnance Survey is unusual among trading funds in its lack of a well-defined relationship with central government.”⁴²

OS has claimed that it is poorly understood within government (and by the private sector also) but this lack of understanding can be used to its advantage as well. Ministers were surprised that the OS was singled out for criticism by the OFT CUI study. Private sector re-users of OS data were not.

Examples

It is difficult to offer firm evidence of the consequences of OS’s position in government and remit, however we would offer three examples which cause us concern:

1. Locus believe that the long-running dispute over national “addressing”⁴³ has endured because of OS’s combined advisory role and commercial position within government. The Association doubts OS would have taken the same stance had it been independent of government; nor do we consider that the lobbying against the NLPG could have been as effective.

2. OS’s response to the Cabinet Office “Transformational Government—Enabled by Technology” proposed that the Digital National Framework has a “fundamental role to play in delivering success” stating that it is currently and “industry standard” being developed through effective co-operation between the private and public sectors. Many in the private sector consider that DNF is a child of OS and certainly being led by them for their own strategic reasons. It is not generally recognised as an industry standard. Regardless of the merit of the OS proposal, the recipients of OS’s recommendations within government are likely to give them considerable weight.

3. The INSPIRE Directive, essentially an European Union initiative to help join-up GI data across Europe, gives OS the opportunity to take leadership and ensure that its own products are well-placed to provide the necessary GI infrastructure across GB. This type of strategic issue, essential to both public and private sectors, should be removed from any commercial interest.

⁴⁰ Quinquennial Review of Ordnance Survey (2002), National Economic Research Associates (page 43)

⁴¹ In an attempt to resolve the dispute between Ordnance Survey and local government over address management ODPM sought to create a “new” solution (the National Spatial Addressing Initiative or NSAI) but offered OS the development and future management of the NSAI without public procurement.

⁴² Quinquennial Review of Ordnance Survey (2002), National Economic Research Associates (p 19).

⁴³ Including Acacia, NSAI, the National Land & Property Gazetteer, AddressPoint, Master Map Address Layer etc.

Conclusions

If GI is important to government, and Locus believes it is essential, then its source of advice should be entirely impartial and not capable of being tainted by accusations of partiality. This is not the case at present. Such accusations, based on real or imaginary issues, are avoidable. The commercial conflicts of interest would not be acceptable in the private sector and should not exist in government. They risk impeding and confusing the smooth flow of government operations.

Locus believes that the OS relationship with government, as it is currently constituted and understood by others, creates risks for the public sector and acts to the detriment of the private sector as well.

Q6 Does OS use a monopoly position to prevent fair and transparent competition in the geographical information market?

Government Policy

The UK government, on the one hand has a policy of maximising the use of PSI, and on the other, as in the case of Trading Funds such as OS, creates economic pre-conditions which inevitably ration and inhibit its use.

OS Aims

“The vision is for OS and its partners to be the content provider of choice for location-based information in the new information economy.”⁴⁴

This position requires some interpretation. OS “partners” are (with the exception of one true commercial partnership with Point X) Value Added Re-sellers (VARs) or customers of OS data. The majority are software vendors, partly because there are few companies who have ventured to collect GI in competition with OS. The vision statement is thus simply making clear OS’s ambition to remain pre-eminent in the field of GI.

Whilst this might be argued to be a reasonable position for OS to take, for a start-up company wishing to develop a new GI product in a tangential area to that of OS, the OS vision poses a clear threat of future competition from OS. An OS VAR can one day wake up to find themselves in direct competition with their “partner”.⁴⁵

OFT

The Office of Fair Trading market study (the Commercial Use of Public Information) made clear its concerns (paras 7.45 and 7.46) about OS. It commented that the OS licensing terms do not encourage re-use and that it provides limited access to its unrefined information, concentrating on developing value-added or refined information itself.

It also explained that, because OS does not separate its upstream and downstream operations, it makes it difficult to prove whether OS is providing equal access and the same prices to business customers and its own internal use of the information.

OS Approach

OS does not allow direct re-use of data contained in the National Geospatial Dataset, arguing, as we understand it, that it would be unusable by a third party without refinement. OS’s view is that its business products are the first stage at which the data becomes of value to re-users. Following the OFT report, Locus understands that OS is re-considering its position.

Conclusions

It is the belief of the Locus Association and its members that Ordnance Survey uses its monopoly position, intentionally or unintentionally, to prevent fair and transparent competition in the geographical information market.

LOCUS RECOMMENDATIONS

Locus believes that many of the difficulties encountered by its members would not have occurred had the original DTLR Select Committee recommendations been adopted. However time has now elapsed; some issues have become clearer and others more polarised. Simply restating the original recommendations may no longer deliver the necessary result.

⁴⁴ OS Framework Document.

⁴⁵ For example, Getmapping plc

We hope that the DCLG Select Committee will find our responses clear. However, we would like to summarise our own current over-arching recommendations in respect of Ordnance Survey.

1. The work of OS in maintaining the base topographic map is important to this country. It is of recognised high technical quality and should be maintained in public ownership as Crown Copyright. However OS should cease to be producer, wholesaler and retailer of their “products and services”. There must be a proper separation of upstream production/procurement (OS “public task”) from downstream commercial activity (OS “commercial”).

2. Government should build-up its own entirely independent in-house GI expertise. It must define the essential data boundaries which the base topographic map should contain and their standards (in accordance with INSPIRE data principles). These boundaries should be determined through an independent consultative process but with the objective of government avoiding re-capturing data already captured elsewhere in government or the private sector unnecessarily.

3. OS (public task) should (1) procure and oversee the ongoing maintenance of the base topographic map and (2) license that data on simple and non-onerous licensing terms at cost (perhaps plus 5%) to Value-Added Resellers (one of which might be a separate “OS Commercial” organisation). OS (public task) would cease to “exploit” the data or act as a VAR of its own data but would aim to break-even overall on its maintenance activities.

4. The OFT pointed to a risk of cross-subsidisation of products. OS (public task) accounting must cease to be opaque (a concern expressed by the Committee’s predecessor) and must reflect the true costs of maintaining the respective elements of data.

It is difficult to find a single example where opening up a non-core public service monopoly to fair competition has not improved both the quality and scope of services available to the consumer and increased economic activity.

OS cannot have a monopoly of good ideas. Locus believes that the Government currently has an opportunity which it cannot afford to miss and which, if properly implemented, has the potential to open up the geographic information market-place to greater investment and innovation for the benefit of all.

Memorandum by the Association for Geographic Information

INTRODUCTION

The Association for Geographic Information (AGI) is the umbrella organisation for all those with an interest in geographic information (GI). Membership comprises individuals and organisations, including government departments and agencies, local authorities, other national organisations, educational institutions, utilities, commercial software companies and data suppliers. The mission of the AGI is to maximise the use of GI for the benefit of the citizen, commerce and good governance.

AGI is additionally a member of the UK GI Panel, a body that aims to give high-level advice to DCLG Ministers on geographic information issues of national importance for the United Kingdom.

Because of its wide and diverse membership, the views expressed by the AGI—whilst taking into account a broad input from members—may not reflect the views of all its individual members. Being a “broad church”, AGI may sometimes find itself caught between members in external dispute and subject to criticism. It is relevant to note that other organisations responding to this enquiry, Ordnance Survey, Department of Communities and Local Government and Intelligent Addressing (whose Managing Director also currently chairs the Locus Association) are additionally members of the AGI.

The AGI sees the work of Ordnance Survey in terms of providing public service, high quality and equitably available data that is current and regularly maintained, as highly essential and considers that the National Topographic Database is a vital national asset. AGI believes Ordnance Survey has a national interest role to play and that at least the publicly funded collection, update and maintenance of unrefined GI data is pivotal to the nation’s well being.

The AGI memorandum is structured below to match the questions originally stated.

 ORDNANCE SURVEY: PUBLIC SERVICE INFORMATION

1. In 2002, the Committee's predecessor, the Transport, Local Government and the Regions Committee, concluded in its report on Ordnance Survey: "there is a clear need to define the boundaries of Ordnance Survey public service and national interest work". To what extent has this changed over the intervening five years?

(a) In evidence of the Select Committee "s recent inquiry into DCLG "s Annual Report, the Department said the ending of NIMSA meant there was "no distinction between public service and commercial activity for Ordnance Survey" (Third report of 2006–07, HC 106; Ev 105). But OS remains the largest public sector information holder in the UK, providing publicly gathered data under licence to organisations both public and private. How clear are the boundaries between its roles as the holder of base geographical information required by its partners and competitors to make their products commercially viable and as a commercial operator within the same marketplace as those partners and competitors?

1. ANSWER

1.1 AGI believes that these boundaries are blurred and are becoming increasingly so. This lack of clarity causes confusion and cost not only to the private sector, but the public sector.

1.2 AGI agrees with the recommendation of the OFT report (ref 1) that "unrefined information" should be distinguished from "refined information" within Public Sector Information (PSI) agencies like Ordnance Survey. The former should be made available on a fair and equitable licencing basis to the commercial sector. Currently, it is suggested, the OS does not distinguish between these in a clear and definitive manner. It must be possible, it is argued, for OS to enable all organisations to access this unrefined data on the same terms as it applies to itself before it refines this data into OS branded commercial products.

1.3 Ideally, publicly gathered data should only be produced once and should constitute the sole definitive product. From this data, other value-added products can be derived. Because there is no regulation currently in place that defines this definitive public data product, the boundaries between publicly gathered and commercially added value continues to be blurred. Nevertheless, the EU INSPIRE Directive (ref 2) requires by 2009 the identification of a reference product for public sector information and thus scope must be made for this.

1.4 From a public sector AGI member perspective, it is believed that the focus of providing and being the national mapping representative is being lost and the 'public service' ethos is perceived to be diminishing. If so, this will be detrimental to Local Authorities (and other public bodies) who rely on mapping to deliver many services (targets for which are set by the government).

1.5 It is pointed out by some local government AGI members that whereas OS incorporates data from local authorities in their products, which is available free of charge and supplied under statutory duty, in return, OS are able to request licensing fees from local government for using a diminishing proportion of their Address Point product in local government's own National Land and Property Gazetteer (NLPG). This specific example raises a variety of complex issues because it also involves Royal Mail licencing costs for the Postcode Address File (PAF). AGI certainly perceives a great deal of concern and confusion from local authorities regarding this matter. OS will state that by offering additional value to the data it uses it can charge licence fees for its products.

1.6 Concerns have been raised that such transactions between public bodies may be financially inefficient to the general public and create a conflict arising from the lack of distinction between publicly gathered data and added commercial value.

1.7 There was, it is believed, a clear remit for public service provision by OS under NIMSA. Its withdrawal, it is feared, leads to a further blurring between commercial and public interest activity and a perception that public service will suffer.

2. In 2002, the Select Committee also identified "a clear need for some form of independent arbitration so that conflicts could be resolved" between OS and its partners and customers. To what extent has this changed over the intervening five years?

2. ANSWER

2.1 AGI believes that although the number of actual cases per year involving the Ordnance Survey has not significantly altered over the period scrutinised by the CLG Committee and its predecessor, there is no unambiguous evidence of an effective independent arbitration process 'with teeth' currently in place.

2.2 For example, the scope for conflict between OS as a public sector information provider and partners and customers has been exemplified in the OFT report (ref 1) on the commercial use of public sector information, culminating in the complaint by one AGI member to the OFT about OS commercial

competition it believes to be unfair. Although the response by the OPSI (ref 3) made several critical observations concerning OS commercial practices and ruled in favour in one area for the complainant, the conflict has not yet, it seems, been resolved in the eyes of the complainant. OPSI states that since its original report Ordnance Survey “has made sufficient progress in the given timescales” and has satisfied OPSI that the recommendations made have been “met” (ref 4). Additionally, the recent conclusion by APPSI (ref 5) that Ordnance Survey’s Address Point product does not fall under PSI regulations has deepened the confusion for AGI members over the position of OS as a public sector information provider.

2.3 AGI eagerly awaits a definitive response from Government to the OPSI ruling to obtain clarification that will be very important to AGI members. In the meantime, two government bodies using public funds are competing for the use of their products by other public sector bodies.

2.4 Because licensing terms are considered conflicting, there is a strong perception from some local government members that this is likely to hamper the ability for joined-up government and setting up local partnerships to deliver local services to the citizen. For example, joint emergency response centres (between fire, police and ambulance services); local community and child services joined up with the health and voluntary sector etc.

GEOGRAPHIC PANEL

3. *What is your assessment of the UK Geographic Panel’s operation since its introduction in 2005?*

3. ANSWER

3.1 AGI has a seat on the GI Panel. It is relevant to state that whilst it has full visibility of meeting content, in terms of public communication it is bound by a level of confidentiality outside the published GI Panel minutes.

3.2 There is some perception in the wider GI community of a lack of transparency about the GI Panel and insufficient communication concerning its activities. This has contributed to concern and disappointment in some quarters over its activities because the role and objectives may not have been clearly articulated and it is considered to be not very effective. AGI has requested a more timely publication of minutes by the GI Panel to help improve communication and this was recently agreed as an action at the April GI Panel meeting.

3.3 The GI Panel is currently focussed on creating and submitting an appropriate GI Strategy to DCLG Ministers—a non-trivial exercise. This is perhaps the most significant formal government related gathering to discuss GI matters and deserves fostering to ensure the maximisation of the use of GI for the benefit of the citizen, commerce and good governance.

3.4 Having the Chief Executive of a Trading Fund as Chair of the GI Panel creates a potential conflict of interest. However, AGI recently supported the continuing role of the OS in the Chair of the GI Panel, because it is so close to the stated submission date of a GI Strategy, that to change at this stage could be detrimental. We believe that the Chair should rotate, as originally intended, at a more suitable point.

3.5 AGI believes it is important to maintain a GI Panel, to improve its communications with stakeholders and also for it to be viewed in a balanced manner bearing in mind some of the political factors that seem to have currently affected it in association with Ordnance Survey.

4. *The Select Committee’s predecessor, in recommending in 2002 that an advisory panel on geographic information should be created, suggested that it should have at least three members, including the Association for Geographical Information, OS and a private sector representative. Is the current panel’s membership currently balanced with three private sector representatives among its 12 members?*

4. ANSWER

4.1 There is a preponderance of public sector organizations on the GI Panel and no representatives from utilities and academia. AGI believes that the size of the panel should ideally not be increased, or increased significantly, to maintain efficiency. In the case of the private sector, no additional single commercial operator should be appointed, rather any additional members should be trade/membership bodies deemed

relevant. Similarly with academia, if given a seat, this should be a collective representation if that is possible. It has also been suggested that there is a lack of any scientific/research council representation on the GI panel. Perhaps NERC should be represented, particularly as sustainable development and climate change move up the government policy agenda?

5. *In a memorandum to the Committee during its recent inquiry into DCLG's Annual Report 2006 the Government said that the ending of NIMSA means "there is no distinction for OS between public service and commercial activity". If that is the case, should the head of a commercially active organisation continue, ex officio, to be official adviser to Ministers on "all aspects of survey, mapping and geographic information?"*

5. ANSWER

5.1 If the DCLG statement is considered to be correct then the head of a commercially active organisation should not continue, ex officio, to be official adviser to Ministers on "all aspects of survey, mapping and geographic information".

5.2 The official advisor to Ministers should be independent of any own commercial interest, which, it is argued, is currently not the case. Even with a clear split of OS activities between collecting data (unrefined) and commercially producing products in competition with others (refined) there is an argument that the head of the former shouldn't automatically be the holder of any of these roles and as head of the latter, certainly not.

5.3 Additionally it is possible that OSGB are not positioned to provide the necessary breadth of knowledge and wisdom to UK Government across all aspects of GI—take for example marine & coastal, geology, meteorology, statistical information, land registration and so on. Ordnance Survey is however, an internationally acknowledged expert in the field of GI data collection and maintenance and its importance in advising Government where and when necessary should not be overlooked.

5.4 If the official advisory role were not solely in the hands of Government agencies such as the Ordnance Survey, the UK Hydrographic Office and the British Geological Survey, perhaps this should be the role of an up-rated GI advisory panel to Government with RICS AGI and other relevant bodies included as members?

NATIONAL INTEREST MAPPING SERVICES AGREEMENT

6. *What impact will the ending of NIMSA have on rural mapping?*

6. ANSWER

6.1 AGI members are concerned that the impact will be either reduced currency of rural mapping (longer intervals between surveys) or increased prices (to existing customers).

6.2 If currency of data is reduced, there is concern that this could have major implications where large housing or road development takes place in rural areas, and may have a detrimental impact on emergency services. It could also have an adverse impact on a dynamic part of the UK landscape—where there are many conflicting development and land management interests at stake. The split between urban and rural areas is changing as development and land use evolves and what may be in the rural category for OS may in practice have moved into the urban one. AGI notes that there is apparent confusion as to the current data maintenance programmes undertaken by Ordnance Survey and the impact of NIMSA withdrawal will have on these programmes. Further clarification from Ordnance Survey would be welcomed.

6.3 There is an argument that any difference in data maintenance policies should not be based simply on the classification of mapping as being "rural" or "urban". Rather priority and emphasis should be given to those areas which are subject to the greatest volume of change. Again Ordnance Survey could clarify its data collection strategy and practices in this area.

7. *Will procurement be more expensive for local authorities now that OS is not providing them under NIMSA?*

7. ANSWER

7.1 AGI believes the outcome of the next Mapping Service Agreement (MSA) will determine the answer to this question. AGI urges that all parties in the procurement of the next MSA should ensure that the process be simpler than the current one and concluded in less time and at less cost (to public bodies) than the last.

8. *Some OS competitors allege it is able to use its position as public sector information holder to compete unfairly, either by imposing over-stringent and costly licence conditions or by developing products of its own in direct competition with theirs but without the associated licencing costs. There are further complaints that OS is an effective monopoly, preventing fair and transparent competition in the GI market. What is your view of these suggestions?*

8. ANSWER

8.1 This is always going to be a controversial area, but certainly a number of private sector organisations have genuine concerns about OS imposing over-stringent and costly licence conditions or by developing products of its own in direct competition with theirs but without the associated licencing costs.

8.2 Some AGI members suggest that they are directly affected by the OS trying to use their alleged monopoly position to dictate terms and conditions of PSI. The case is well exemplified in the conflict between local government (represented by Intelligent Addressing) and OS over addressing data where both bodies compete against each other in the provision of addressing datasets. This led to the recent complaint by Intelligent Addressing, the private sector body that manages the NLPG on behalf of local authorities, to the OPSI. In a ruling (ref 3) OPSI pointed out that OS licensing terms were not transparent and fair. OPSI now states that Ordnance Survey has made progress in these areas and that they are satisfied their report recommendations have been “met” (ref 4). Nonetheless these have not appeared to have been resolved to the satisfaction of the complainant.

8.3 To complicate the matter for a number of AGI members, APPSI in its recent assessment (ref 5), concluded that Ordnance Survey’s Address Point product does not fall within the regulations for public sector information, yet it is provided under Crown copyright by a public sector organisation. It is not clear where the APPSI report leaves local government. There is confusion as to whether APPSI consider local government to be the only public sector body that produces public sector address information? What is the role of Royal Mail PAF data? Does this fall within the public sector information category or not? What is the situation of competition between PSI and non-PSI data? The situation of addressing has become so confusing that it is essential for central government to clarify the situation for the benefit of running an efficient and effective service by local government. The current situation of duplication, uncertainty, lack of transparency consumes valuable public funds to provide services to citizens and urgently requires a clear resolution.

8.4 AGI stresses that addressing is not purely a problem affecting Local Authorities. From central government, emergency services and wider commercial perspectives there are other beneficiaries who need to be served by national, well-maintained and consistent address products which are free of confusion and uncertainty.

8.5 Some members have raised concerns about the time taken to understand the Terms & Conditions and often “standard” agreements are supplemented with non-standard side letters. AGI Members cite that licenses have increased in length—the current OS Address Point VAR agreement is approximately 48 pages, whereas many private sector companies are moving to shorter licences composed of clearer terms in order to help stimulate business.

8.6 AGI believes Ordnance Survey has found itself caught between a blurred public and commercial role and as a result is subject to difficulties, misunderstandings and conflicts. AGI is concerned that this may stretch the capacity of the organisation to cope with the demanding and complex circumstances it finds itself within. OS is skilled and respected for data collection, update maintenance and production. It is in the area of distribution, pricing and licencing where difficulties and confusion start.

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 3. Office of Public Sector Information Report on its investigation of a complaint (SO 42/8/4): Intelligent Addressing and Ordnance Survey, July 2006.
 4. Evaluation of Progress made by Ordnance Survey, OPSI, March 2007.
 5. Review Board of APPSI Report, April 2007.
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Memorandum by Getmapping

I am responding on behalf of Getmapping plc to your letter of 24 April 2007 to Sir Bryan Carsberg asking for submissions for your committee's forthcoming review of Ordnance Survey (OS). Getmapping is a member of the Locus Association.

Getmapping is an OS Licensed Partner and a reseller of OS's mapping products. However, Getmapping's main area of business is to create and maintain a national aerial photographic survey of Britain (The Millennium Map) which is in direct competition with OS's Imagery Layer. Thus our main concerns with OS are from the point of view of a direct competitor and not a re-user of OS data.

Before answering your specific questions, I would like to try to give you a clear idea of how difficult Getmapping is finding it to operate as a competitor of OS now that OS is acting as an unregulated commercial entity with unclear boundaries between its public service and commercial activities. We think that these difficulties, experienced by many companies in the Geographic Information (GI) field, have badly damaged the development of Britain's GI industry.

I have also attached a number of Appendices to illustrate some of the issues raised in this letter and to demonstrate that the GI industry has been unable to find a satisfactory channel through which to have them addressed. Since some of the Appendices were sent in confidence I would be grateful if at least the Appendices are not made publicly available.

A BRIEF HISTORY

When we launched Getmapping (then the Millennium Mapping Company) in 1999 OS was not acquiring any colour photography and was not producing any mosaiced (ie seamless, map-accurate) aerial photography products. Furthermore OS had no plans to do so. OS therefore became a reseller of Getmapping's Millennium Map and the two organisations seemed set to work together in a long term and mutually-beneficial partnership. Had this state of affairs continued I believe that Getmapping would by now be a much larger and more profitable company operating on an international basis. We were the first company world-wide to develop a private-sector national aerial survey served via the internet, and our plan was to develop an international business from a solid UK base.

However in 2001 OS decided to compete with Getmapping by creating and owning its own Imagery Layer, an equivalent of Getmapping's Millennium Map. In Getmapping's view OS's Imagery Layer was going to be subsidised from public funds and so in 2002 Getmapping took legal action against OS to try to prevent OS from competing unfairly against Getmapping in the imagery market. Getmapping had to withdraw from this action before it came to trial because the company had insufficient funds to continue, and Getmapping also lost its appeal for an injunction to force OS to include the Millennium Map within OS's Digital National Framework. The judgement from the injunction hearing was highly critical of Getmapping's case, and Getmapping was ordered to pay OS's costs which were over £450,000 (although Getmapping and OS eventually agreed on the payment of a smaller six figure sum which our Settlement Agreement prevents me from disclosing). See Appendix A for a description of the issues behind the case.

Getmapping still believes that OS is competing unfairly in the imagery market. We think that OS can do this because the boundaries between its national interest and its commercial activities are not well defined and because there is no effective regulator to whom we can appeal for help. Had OS taken notice of the recommendations of the previous 2002 Select Committee report then we think that many of our current problems would have been avoided.

COMPETING WITH A TRADING FUND: A COMPETITOR'S VIEW

From Getmapping's point of view, competing with the OS in the imagery market has been a dangerous, frustrating and uncertain process.

- From 1999–2001 we worked in partnership with OS with the expectation that OS would resell the Millennium Map and use it as an Associated Data layer within OS's Digital National Framework.
- From 2001–03 OS was a direct competitor of Getmapping and OS's intention at that time was to acquire colour imagery only once (for map update and the Imagery Layer) and to offset the majority of the Imagery Layer costs against its cartography budgets. In reaction to this situation Getmapping developed a new strategy which involved abandoning national maintenance of the Millennium Map. Instead Getmapping would become a licensed reseller of OS's Imagery Layer and Getmapping would supplement the Imagery Layer with its own higher resolution photography of key areas of the country. However, it soon became clear that OS did not have the power to license its Imagery Layer to its Licensed Partners.
- From 2004–06 it became apparent, although nobody ever told us, that in fact OS was not after all permitted to re-use its cartographic photography within the Imagery Layer. OS was in effect having to acquire (or procure from third parties) the photography twice, once for cartography update and once for the Imagery Layer. However, during this period OS explained that from 2007 they would return to the strategy of flying the country once for both cartographic update and the Imagery Layer. Suppliers of photography would not be allowed to retain ownership of the

photography, as had happened for the first layer of the Imagery Layer. OS justified this policy, which in our view amounts to a cross-subsidy of funds from OS's dominant and unassailable position in the cartography market, on the basis that it was now winning its cartography contracts for Local and Central Government under open competition (the Mapping Services Agreement (MSA) and Pan Government Agreement (PGA) respectively).

- 2007. There has been no sign of any procurement activity for OS's second layer of the Imagery Layer, and we have no idea of their current intentions. However we have recently discovered that OS is already using some of its cartographic update photography in the Imagery Layer which in our view is a cross-subsidy from its public service to its commercial activities.

It has been very difficult to develop the company in the face of these swings in OS's intentions—we know that OS intends to make our current business model unsustainable, and we have to spend a lot of time and effort planning alternative business models and trying to find a regulator/arbitrator who can help us.

Throughout this period of uncertainty Getmapping has tried to establish a channel through which it could voice its concerns and have them debated and resolved openly and fairly. We have tried OS itself (at all levels), DTLR/ODPM/DCLG (at all levels), OFT, HMSO and the National Audit Office. In 2003 we founded the Geographic Information Forum (GIF) to try to get the weight of several companies behind the need for recognition and resolution of the problems. And in 2005 we were closely involved in the establishment of the Locus Association. We have used our own resources as well as help from our MP. Through the GIF and Locus we have engaged in political lobbying in Britain as well as lobbying to the European Union. See Appendices B.1 to B.4, C.1 to C.3 and D for some examples of our attempts to try to establish a channel for complaint: none of these efforts has so far resulted in any useful advice or support.

From the point of view of a competitor of OS Getmapping has formed some strong impressions about OS, its regulation and the effect of the current situation on our ability to compete effectively.

(a) *Competition versus Co-operation*

As a Trading Fund OS has a responsibility to act as a commercial entity and make a profit. This is bound to clash with OS's remit to act as a force to develop the GI Market in Britain for the good of all.

We think that OS has not paid nearly enough attention to the effect of its actions on other companies within the sector. OS is in a dominant position in the market and it is (in effect) state funded (through un-competed or ineffectively-competed mapping contracts for government and the utilities). From this dominant position OS ought to have a duty to ensure that it deals fairly with the rest of the market. In our view it does not do so.

(b) *Regulation/Arbitration*

As far as we can see there is no effective regulation of OS. None of Getmapping's complaints has seemed to result in a useful outcome. Furthermore I personally believe that in the case of Getmapping's 2003 complaint to HMSO, Geoff Sadler (who was responsible for our case) was not given the freedom to deal with it as he saw fit. I believe this because at our first meeting Geoff Sadler was very sympathetic and said that there did appear to be an abuse. He said that at the very least he would ensure that we were given a fair hearing and that he would get the parties together to discuss the issues. However, Getmapping's complaints were dismissed. HMSO's report appeared to contain a fundamental discrepancy. HMSO acknowledged that OS "should not use its market power to compete unfairly" but then said that "where there is mixed use of imagery for cartography and the Imagery Layer, the costs are apportioned. HMSO are satisfied with this approach." We asked for a justification of this discrepancy but we were never able to discuss this with Geoff or anybody else. See Appendices C.1 to C.3 for details of the complaint, HMSO's response and Getmapping's counter-response.

The regulatory framework appeared to be moving in the right direction with the creation of OPSI, and we were all encouraged when in 2006 Intelligent Addressing had a complaint upheld by OPSI. However, it now appears that OPSI has no power to enforce its recommendations, and so we are no further forward.

This situation is analogous to a dog (OS) worrying sheep (OS's competitors). From 2001 to 2006 the sheep bleated but there was no owner (regulator) within earshot. When at last the owner listened (OPSI in 2006) and ordered the dog to heel, the dog ignored the command. We think that the dog must be put on a lead (through effective regulation) and/or the sheep must be enclosed within a field (ie there must be clear boundaries to the scope of OS activities). Only when the sheep are safe can they develop properly and attract investment.

Despite the apparent lack of success, we suspect that behind the scenes things may not be quite as bleak as they seem. For instance, although Getmapping lost its injunction hearing, and although its complaint to HMSO was dismissed, OS for some reason never carried out its stated intention of using the bulk of its cartographic photography to populate its Imagery Layer. Perhaps after all there is a mechanism, invisible to the private sector, by which OS is to some extent controlled. However, we think that it is more likely that OS is aware that it cannot afford to be too aggressive in its treatment of its competitors for fear of arousing the interest of the regulators.

(c) Consultation and Communication

Since 2000 OS has stopped publishing the Information Papers and Consultation Papers which used to keep the industry informed of its plans and intentions. OS has never consulted Getmapping about its plans for the Imagery Layer or listened sympathetically to Getmapping's concerns about the effect of its plans. At a working "Account Manager" level OS staff have been helpful and co-operative. However, the Account Managers seem ignorant of, and are certainly not able to influence, OS's policy. At the policy/director level OS's attitude to Getmapping has generally been aggressive and arrogant. Several times Getmapping has been urged to become a supplier of imagery to OS and to give up its aspirations of owning its own data.

(d) OS Remit and Boundaries

It seems to us that OS has at least one market in which it is both dominant and in effect publicly funded. This "national interest" market is the creation and maintenance of national large-scale mapping (MasterMap). However, there are other "commercial" markets in which OS is not in a dominant and publicly-funded position. Aerial photography is one such market in which the private sector is stronger than OS, and so far the OS Imagery Layer has not made very much impact on our sales. In these markets OS should compete on equal terms with the private sector.

We think it is absolutely vital that a clear boundary is drawn between OS's "national interest" markets and its "commercial" markets, and that procedures are put in place to ensure that there is no form of cross-subsidy between one and the other. At the moment there are no clear divisions between the two types of market, and there are no clear rules to prevent cross-subsidy.

(e) Unfair Practices (with an Example)

In Getmapping's opinion, OS indulges in practices which are blatantly unfair and which it knows to be unfair. OS acts unfairly because it calculates that it can get away with it and because it puts its commercial interests before the wider interests of the GI industry. OS is encouraged in this behaviour by the knowledge that there is no effective regulator.

I will provide a single current example to illustrate this point. OS is competing with Getmapping for the provision of the Imagery Layer, and from 2004–06 OS has been funding its Imagery Layer photography separately from the photography it uses for updating its cartography. In other words OS is effectively funding two layers of photography, one for the Imagery Layer and one for cartographic update. This is good for Getmapping because there is no cross-subsidy of the Imagery Layer from OS's cartographic budgets. However in June 2005 OS announced to Getmapping that from 2007 it would procure a single layer of photography that would be used for both the Imagery Layer and the Cartography update programme, and that OS would offset the cost of the photography against its cartographic budgets. OS's justification for doing this is that all the government's mapping requirements have now been competed (under the Mapping Services Agreement (MSA) for Local Authorities in 2004 and under the Pan Government Agreement (PGA) in 2006). Because OS would win this mapping work in open competition then OS was justified in arguing that it was no longer in a monopoly position and that it could therefore offset its Imagery Layer costs against its cartography programmes.

If OS was allowed to do this then Getmapping's current business model would be unsustainable. We would have to pay (about £1 million pa) to acquire our photography while OS could offset those costs. Getmapping simply could not compete.

OS's argument is clearly unfair because both the MSA and PGA competitions were designed in such a way that only OS could supply the cartography. (They could have been designed differently, but ODPM, of which the Director General of OS was a director, chose not to do so). How can we assert that only OS could win? The main reason is that the winning contractor was required to supply complete large-scale cartography for the entire country within 6 weeks of winning the contract. This is clearly impossible unless a bidder was prepared to invest in creating an entire large-scale map of Britain in advance. This would take about five years and cost perhaps £100m. Please see Appendix F for more details of why we believe the PGA procurement was unfair.

We believe that OS can only indulge in such blatantly unfair practices because it knows that there is no effective regulator and that its private sector competitors cannot risk taking them to court.

(f) Effect on Getmapping's Ability to Develop its Business

Getmapping entered the Imagery Layer market in 1999, and we floated the company in 2000 with the aim of developing an international imagery layer which would be served online. In other words we wanted to create a Google Earth. Getmapping was the first company in the world to create a privately-owned national scale aerial survey.

Until 2001 the business developed well in the UK. In addition we launched a Spanish and an Australian joint venture and we opened discussions with third party data suppliers in many other countries (Sweden, Germany, France, Holland etc).

However when OS announced its plans for its own Imagery Layer in May 2001, the whole picture changed. Our sales were damaged by the loss of OS as a reseller; public sector sales were damaged because OS failed to announce any prices for its Imagery Layer; we had to abandon our 50 cm survey of Scotland because OS offered us a contract to license our Scottish data from us provided we re-flew it at 25 cm; our shares crashed; and we spent nearly two years and c £300,000 on legal fees to try to prevent OS from abusing its dominant position. As a result of this the company nearly failed. We had to cut our staff, abandon our overseas plans and retrench.

However, the effects of OS as an unregulated Trading Fund go much further than that. Even now we find it very difficult to plan our future when we don't know whether OS will be allowed to offset the costs of its post 2007 imagery against its cartography budgets. If it is allowed to do this then Getmapping's current business will become unsustainable. Our difficulty is that we cannot raise money for new investments or make a proper business plan until we know how these issues are going to be resolved. Every year we have to reflect the uncertainty over OS in our Annual Report and Accounts, and this keeps our share price depressed and makes it impossible for us to raise more money for investment.

THE COMMITTEE'S SIX QUESTIONS

Many of the Committee's six questions have already been covered to some extent in the paragraphs above. Additional comments are provided below:

Q1 Boundaries of OS's Public Service and National Interest Work

We believe that very little has changed since 2002. We think that it is vital to define clear boundaries between OS's National Interest (and quasi-publicly-funded) activities and its Commercial Activities and to ensure that there is no cross subsidy between the two.

It might also be helpful to define a third category of activity in which OS will not be allowed to operate at all, for instance publishing road atlases. This would give companies a clear indication of where they could build a business without fear of competition from a dominant National Mapping Agency.

Once defined we believe that the boundaries between these three classes of activity should not be allowed to change without extensive consultation and a five year warning so that companies involved can make plans to adjust their business plans accordingly.

Q2 Effective Arbitration

We think that the current arbitration process is hopelessly weak and inadequate. Furthermore we do not believe that it is independent: we think that HMSO was prevented from dealing properly with our 2003 complaint.

However, it does appear that behind the scenes OS may sometimes be constrained by somebody. An example of this is that, despite saying in 2002 that it would replace the first licensed layer of the Imagery Layer with its own cartographic photography, OS has not done so. This is a mystery to us.

We would also like to stress that an effective arbitration system must allow for a complaint to be made in a simple letter and in layman's terms. The onus should then be on the arbitrators to get to the bottom of the issues and make their ruling. If a company has to spend perhaps £50,000 paying lawyers to formulate a complaint then most issues will never see the light of day.

Q3 What is your Assessment of UK Geographic Panel's operation?

Getmapping has very little knowledge of how the panel is working. We have had no contact with the panel and have not seen any significant outputs.

However, we think it is wrong on two counts that OS leads the panel that provides strategic GI advice to the government. First, OS now has a commercial interest, and we believe that OS would naturally use its position on the GI Panel to further that interest. Second, OS is a supplier of maps, and it will naturally lean towards a Rolls Royce solution to mapping products which may be far removed from what the users need. For example many users consider that MasterMap is over-specified and too sophisticated for the majority of its users. And yet OS was able to specify it on behalf of government and the utilities who are now forced to pay for it. We think that it would be better for the specification of the customers' needs to be entirely separate from the suppliers.

Q4 *Is the UK Geographic Panel's membership Well Balanced?*

No, it is far too biased towards OS and the public sector. In addition none of the GI panel members has ever made an approach to Getmapping to ascertain our views about National GI policy.

Q5 *Should DGOS advise the Government on GI?*

No, DGOS should definitely not advise the Government on GI issues. DGOS is almost bound to try to influence policy to benefit OS's commercial position.

This would apply even if there was a clear separation between public service and commercial activities because DGOS would still have an interest in providing advice which benefited OS's Commercial arm.

Q6 *Unfair Competition*

A lot of the Q1 arguments apply here. OS is unquestionably in a dominant position in the mapping market—this dominance is perpetuated by the MSA and PGA competition structures which do not make it possible for anybody to compete for the large scale mapping—therefore OS receives over £50 million of public money per annum to maintain the country's mapping—OS sees no distinction between its public good and commercial activities and therefore feels free to cross-fund between these activities. This is still the case—OS is now embarking of a policy of “fly once and use many times” for aerial photography which means that OS still intends that its cartography budgets will underwrite its commercial Imagery Layer.

This takes us back to Question 1. The solution is to define clearly each of OS's activities as “Public Good”, “Commercial” or “Out of Scope”. Then there needs to be a clear procedure to ensure that there is transparency and no subsidy between the Public Service and the Commercial activities.

SUMMARY

In summary, Getmapping is in the business of providing a product which it has to pay for itself. Getmapping competes against OS which is allowed to offset the costs of its photography against its Public Service cartography budgets. This behaviour has been specifically condoned by HMSO. So far OS has, in the main, chosen not to cross-subsidise the bulk of its Imagery Layer. However, from 2007 it intends to do so. So Getmapping is in effect living on borrowed time—it should not be possible for Getmapping to compete effectively with OS under these conditions. This is both unfair and bad for the development of the GI industry.

In 2002 the DTLR Committee correctly identified the main problems with the structure of OS and made clear recommendations for putting them right. All but one of the recommendations were ignored by ODPM/OS, and as a result Getmapping and the other direct competitors are still suffering from an unfair competitive environment.

Getmapping hopes that the Committee will recognize the problems that still exist and that it will re-iterate its recommendations. Furthermore, Getmapping hopes that the committee will consider mechanisms for ensuring that its recommendations cannot be ignored for a second time.

Memorandum by the Department for Environment, Food and Rural Affairs (Defra)

The CLG Select Committee follow up inquiry focuses on four areas:

1. The distinction between Ordnance Survey's role as a public information holder and a commercially operating organisation
2. The regulatory regime for the provision of public service information
3. The ending of the National Interest Mapping Services Agreement
4. Role of the Geographic Information Panel.

The submission from Defra relates to items 1 and 3 and illustrates issues faced by Defra and its wider “Network” of Agencies and Non-Departmental Public Bodies. This evidence is submitted to the Committee to help establish whether the current role of OS is having an impact on data sharing, to ensure that Defra can anticipate any challenges ahead in implementing the INSPIRE Directive⁴⁶ and to help find solutions to these constraints.

⁴⁶ INSPIRE (Infrastructure for Spatial Information in the Community) is a European Commission Directive that was adopted in May 2007 to improve the interoperability of spatial information across the European Union at a local, regional, national level.

INSPIRE DIRECTIVE

Defra and OS have enjoyed a close working relationship throughout the recent negotiations on INSPIRE. However, the Defra Network also experiences difficulties in sharing data derived from OS mapping with our wider delivery partners.

Defra co-ordinated and maintained the UK government position for INSPIRE. Officials worked closely with OS to safeguard the interests of Trading Funds. The EC starting point in negotiations had been that no charges should be allowed for licensing of data between public sector organisations.

However, the Directive will require license terms and conditions for geographic data to be consistent across Europe and consistent with the objectives of the Directive, which are to support sharing and re-use of environmental data.

OS mapping underpins a wide range of Defra Network activities including, for example, the administration of farming subsidy payments and the management of animal disease outbreaks.

We also need to share data derived from OS mapping with our wider delivery partners, non-government organisations and the public. OS licence terms and conditions can constrain our ability to share this information. It is our understanding that these difficulties arise at least in part from the dual role of OS as a public information holder and a commercially operating organisation, which is a specific area of interest for the Committee.

DISTINCTION BETWEEN ORDNANCE SURVEY'S ROLE AS A PUBLIC INFORMATION HOLDER AND A COMMERCIALY OPERATING ORGANISATION

The Defra Network licenses OS mapping through the CLG-led Pan-Government Agreement (PGA). Restrictions surrounding the use of OS mapping can have an impact on our business operations, primarily through constraining our ability to share information derived from OS mapping. These restrictions may also have an impact on the obligations to share data that will arise from the INSPIRE Directive.

It is our understanding from discussions with OS that their position as a dominant public sector supplier of information introduces a high risk that government activities using its mapping may be deemed to compete with the private sector.

This risk then restricts the sharing of information derived from OS mapping that could be viewed as a substitute (or partial substitute) for the mapping from which the information was derived.

However, other constraints are also introduced to protect Crown Copyright interests or for revenue protection. The combination of these different factors makes it difficult to identify a straightforward solution to enable the sharing of derived information, and this played a significant part in the failure to procure the PGA in 2006.

We need to better understand which constraints arise as a result of the OS dual role and get the right balance between sharing and reuse of information and the trading of public sector information. Ideally this would enable government to share information derived from OS mapping in pursuit of their core business activities and would be manifested through in simpler licensing and charging procedures for sharing derived data.

The following examples of the difficulties in sharing derived data faced by the Defra Network illustrate the current concerns and challenges that will need to be overcome through implementation of the INSPIRE Directive. A key question is therefore whether the dominant position of OS in the market place will have an impact on the ability of OS to comply with the requirements of the Directive?

1. *Submission of environmental boundary information to the European Environment Agency*

Defra (with the Joint Nature Conservation Committee) recently co-ordinated the submission of boundary data to the European Environment Agency (EEA) from England, Scotland and Wales. These boundaries include Sites of Special Scientific Interest and National Nature Reserves and were derived from OS mapping. Although the boundaries themselves could not be used as a substitute for OS mapping, OS apply restrictions with regard to the onward use of such derived information.

UK Government bodies share environmental boundary data as widely as possible with third parties to ensure there is the broadest possible awareness of the designation. The PGA licence requires that a recipient must agree to the terms of a "derived data licence agreement" before accessing it. This agreement mainly seeks to restrict onward commercial use of the data (for which a royalty would be payable). However, in this case, the need for recipients to agree to these terms has meant that onward distribution of the data around Europe has been restricted.

The EEA has created a portal by which citizens in member states can view and download environmental designation data for different countries. As a result of the OS requirement, UK data has only been made available to view, not to download. The complexities of presenting the licence agreement on the EEA portal

for third parties ruled out a download facility. Instead, third parties (including, for example, the United Nations) are separately directed to the relevant bodies in the UK to access that data. The UK now stands out in Europe as restricting access to its data.

2. *Restrictions on sharing the Land Cover Map with Defra partner organisations*

The Land Cover Map (LCM) is a collaborative project funded by Defra and the Centre for Ecology & Hydrology. The latest iteration of the project (LCM2007) proposes the creation of a new land cover map derived from MasterMap (a digital mapping product sold by the OS) together with earth observation and other ancillary information. The main business driver for Defra's involvement in this project has been the need to share land cover information with Defra partner organisations (including the European Environment Agency (EEA) as mentioned in "example 1" above).

Defra has shared a previous incarnation of the LCM with partner organisations. Our position is that the LCM itself cannot be used as a substitute for MasterMap, as it has been created through a process of simplification and combination with other information.

OS supported successful pilot studies of this approach to create an updated version of the LCM (2007). However, OS do not agree with our position that LCM cannot be used as a substitute for MasterMap and distribution is therefore restricted. Royalty free access is only available to organisations already licensed to use the MasterMap product. This undermines Defra's business case for continued investment in the LCM given that the objectives it was designed to satisfy are difficult to reach as a result.

3. *"Open Country" and "Registered Common Land" information*

Natural England (NE) has also faced difficulties in distributing boundaries of Open Country and Registered Common Land to third parties. This information has also been derived from MasterMap. Again, because OS consider that information from mapping can be used as a substitute for the product from which that information was derived, NE were prevented from distributing the information to organisations not licensed to use MasterMap.

A compromise was agreed with OS whereby the derived information could be merged with additional information and the internal boundaries removed. However, this was far from ideal.

The cost of licensing MasterMap means it is prohibitively expensive for most of the smaller or non-government organisations that the Defra "Network" wishes to share derived information with.

ENDING OF THE NATIONAL INTEREST MAPPING SERVICES AGREEMENT

Maintaining currency of mapping in Rural and Moorland areas

The National Interest Mapping Services Agreement (NIMSA) provided funds for OS to undertake activities which were in the national interest, but which do not generate revenue. This included the updating of rural and moorland areas. As a result of the ending of NIMSA funding, the revision of mapping in such areas may become less frequent.

Defra discussed the impact of the loss of NIMSA funding with CLG during the consultation period when removal of the funding was proposed. The Defra Network expressed a strong interest in ensuring that OS mapping is maintained in rural, moorland and coastal areas, as the lengthening of revision cycles means that essential business activities will increasingly rely on out of date information.

It would be helpful to now understand what the impact of removing NIMSA funding has generally been on OS mapping update cycles and specifically on the updating of rural and moorland maps and OS Address data in rural areas?

Our original response to the CLG consultation mentioned that in some instances the Defra Network may increasingly have more up to date information than OS on some rural boundaries, and there may be the potential for data sharing? This has not been explored further.

Defra also expressed strong support for the 24-hour emergency mapping helpline that is funded by NIMSA, which has been continued.

Memorandum by the Office for National Statistics

1. DESCRIPTION OF THE OFFICE FOR NATIONAL STATISTICS AND ITS RELEVANCE TO THE INQUIRY

1.1 The Office for National Statistics (ONS) is responsible for the production and publication of UK National Statistics. It is the Government Agency that conducts censuses of population in England and Wales and an extensive range of social and business surveys and it currently administers the civil registration service (births, marriages and deaths).

1.2 ONS, and its predecessor departments, have had an extremely long and close working relationship with Ordnance Survey and it currently makes extensive use of Ordnance Survey's products for a wide range of purposes. These include digital boundaries of administrative and electoral geographies to underpin the production of statistics and reference/thematic mapping, grid reference co-ordinates for unit postcodes and geo-referenced unit postcodes under Consortium arrangements which also support the production of social and economic statistics, address data used to provide a corporate address matching capability, and background mapping to support the enumeration of the 2011 Census and the regional and local management of social surveys.

1.3 ONS is also conducting research into the suitability of the Ordnance Survey MasterMap Address Layer 2 product (together with Intelligent Addressing's National Land and Property Gazetteer product) to provide a comprehensive address base to support census enumeration.

1.4 ONS and Ordnance Survey hold regular high level liaison meetings to discuss strategic issues of mutual interest and benefit. Both organisations are represented on a number of committees which include the UK Geographic Information Panel and the Intra-departmental Group on Geographic Information (IGGI). ONS is also represented on the interdepartmental group steering the re-negotiation of the Pan Government Agreement for the provision of mapping and ancillary services to central government.

ORDNANCE SURVEY : PUBLIC SERVICE INFORMATION

Q1 In 2002, the Committee's predecessor, the Transport, Local Government Communities and Local Government Committee, concluded in its report on Ordnance Survey: "there is a clear need to define the boundaries of Ordnance Survey public service and national interest work". To what extent has the position changed in the intervening five years?

A1: ONS agrees that a clear definition of Ordnance Survey's responsibilities with respect to "public sector and national interest work" is essential. ONS is not aware of any change in the position on this in the past five years.

Q2 In 2002, the Select Committee also identified "a clear need for some form of independent arbitration so that conflicts could be resolved" between OS and its partners and customers. To what extent has that position changed in the intervening five years?

A2: ONS are aware that Ordnance Survey is working in an increasingly complex legal and business environment—notably with recent changes to Competition Law and a number of recent legal challenges. In our experience it is clear that Ordnance Survey take their responsibilities to remain within the law extremely seriously and have made every effort to develop policies which are fair and consistent across its whole range of customers.

The complexity of this operating environment, however, does sometimes result in conflicts of views—including disagreement on points of principle between legal representatives on either side. Such conflicts are time-consuming and inefficient to government. ONS are not aware of any change in the situation on independent arbitration in the past five years and would strongly support a proposal to introduce such a facility.

GEOGRAPHIC PANEL

Q3 What is your assessment of the UK Geographic Panel's operation since its introduction in 2005?

A3: The Geographic Information (GI) Panel is developing into an effective strategic group with the capacity to provide focussed advice to the Government. It has prioritised its potential activities under its terms of reference and focussed almost exclusively on developing a GI strategy for the UK. This seemed to be appropriate in 2005 but has resulted in a 2 year delay in action starting on the full range. Work on the GI Strategy appeared to be largely complete at the December 2006 meeting of the GI Panel, which approved the main elements of the strategy. However work seems to have slowed since and the Strategy has not (as of end May 2007) been presented to Ministers.

The GI Strategy is closely linked to the ground covered by the INSPIRE Directive and it makes sense to progress both together. The delay to the Strategy may threaten this link if the work on INSPIRE goes ahead before the Strategy is agreed. Apart from its work on the Strategy the GI Panel itself has not been very active

on “To facilitate a co-ordinated position on potential legislation, both national and international, that might impact on the geographic information market” which could have influenced UK work on INSPIRE. It has, though, retained an interest in progress on INSPIRE.

The GI Panel is not directly resourced which has limited its capacity for action on its terms of reference. A resourced secretariat could help it move forward.

Vanessa Lawrence, Director General and Chief Executive of Ordnance Survey, has been a competent and enthusiastic chair of the GI Panel. She has acted strategically and does not appear to have been taking decisions which favour Ordnance Survey. Vanessa Lawrence has also, however, found it difficult to always find time for GI Panel business.

Q4 The Select Committee’s predecessor, in recommending in 2002 that an advisory panel on geographic information should be created, suggested that it should have at least three members, including the Association for Geographical Information, OS and a private sector representative. Is the current panel’s membership sufficiently balanced with three private sector representatives among its 12 members?

A4: Considerable expertise in geographic information issues is represented by the members of the GI Panel. Although there are only three private sector representatives the one from the Association for Geographical Information represents a wide constituency of private sector bodies and has been active in keeping them informed about GI Panel discussions. Overall the existing GI Panel seems to have good dynamics in its meetings, drawing fairly on the expertise of all its members. The ONS, through its involvement with the AGI, is not aware of any dissatisfaction with the balance of the GI Panel.

Q5 In a memorandum to the Committee during its recent inquiry into DCLG’s Annual Report 2006, the Government said that the ending of NIMSA means “there is no distinction for OS between public service and commercial activity”. If that is the case, should the head of a commercially active organisation continue, ex officio, to be official adviser to Ministers on “all aspects of survey, mapping and geographic information”?

A5: In light of their key role it seems entirely appropriate that the Director General and Chief Executive of Ordnance Survey should remain a key official adviser to Ministers on “all aspects of survey, mapping and geographic information”. It is important however—particularly if the DCLG statement is considered to be true—that the views of other sectors or the GI community are taken into account, particularly on longer term strategic issues. This might be enabled through a strengthening of the role of the GI Panel and reconsideration of the chairing of the panel. Vanessa Lawrence has twice been reappointed as chair reflecting her competence and enthusiasm. But there is a question as to whether CLG as Ordnance Survey’s sponsoring department should play this role.

NATIONAL INTEREST MAPPING SERVICES AGREEMENT

Q6 What impact will the ending of NIMSA have on OS’s own structures, financing, turnover and dividend?

A6: ONS does not have sufficient knowledge on this issue to be able to respond to this question.

Q7 What impact will the ending of NIMSA have on rural mapping?

A7: ONS does not have sufficient knowledge on this issue to be able to respond to this question.

Q8 Will the procurement of necessary services be more expensive for local authorities now that OS is not providing them under NIMSA?

A8: ONS does not have sufficient knowledge on this issue to be able to respond to this question.

COMPETITION

Q9 Some OS competitors allege it is able to use its position as public sector information holder to compete unfairly, either by imposing over-stringent and costly licence conditions or by developing products of its own in direct competition with theirs but without the associated information licensing costs. There are further complaints that OS is an effective monopoly, preventing fair and transparent competition in the geographical information market. What is your view of these suggestions?

A9: ONS does not have sufficient knowledge on this issue to be able to comment on the competition aspects of this question. We note, however, that licensing negotiations and agreements with Ordnance Survey are sometimes extremely complex and are consequently time consuming and inefficient for government. It would be extremely useful if simpler mechanisms for licensing of Ordnance Survey data could be developed. Such mechanisms would also simplify and so encourage wider 3rd party use of Ordnance Survey products and of other public sector information.

**Memorandum by Defence Intelligence, Intelligence Collection Strategy and Plans,
Ministry of Defence (MOD)**

RESPONDING BODY—BACKGROUND

1. Within the Ministry of Defence (MOD), Director General Intelligence Collection (DGIC) is charged to supply Geospatial Information (GI) to the armed forces in support of operations, exercises and training both in the UK and overseas. DGIC delegates this responsibility to the Intelligence Collection Group (ICG), where the Defence Geographic Centre (DGC) has arrangements for the supply of UK data both directly with the Ordnance Survey (OS), and through the Pan Government Agreement managed by Communities and Local Government. Defence Intelligence, Intelligence Collection Strategy and Plans (DI ICSP) provides the overall policy guidance for provision of GI to defence on behalf of DGIC, and the former Director DI ICSP (Brigadier Rigby) represented MOD on the GI Panel.

2. The MOD is therefore a major customer of the OS, and has a contingent interest in OS data. The MOD requires access to a reliable national database, which can be used for a range of “non-commercial” defence and wider governmental purposes unconstrained by license restrictions, including civil contingencies and crisis response tasks. There has been a very close working relationship between the MOD and OS for the last 250 years, with the MOD being the ‘owner’ of the OS before it became a civilian government body. The MOD believes it is critical that the UK has a national geographic database which is both current and accurate, and available in a consistent and standard format for use by both public and private sectors.

ANSWERS TO QUESTIONS

3. Q1. To date the OS has provided an excellent service, and it is recognised as a world class organisation in the field. However, in recent times the boundaries applied to the use of Ordnance Survey’s data for public service and national interest work have become increasingly blurred. MOD has experienced more stringency and complexity being applied to the release of data by OS, which has resulted in uncertainty and lack of flexibility in the use of that data by the MOD.

4. Nevertheless, one significant improvement for government users has been the setting up of the separate Pan Government Agreement giving members access to a suite of OS digital products. This arrangement allows sharing of products and derivatives between member government departments which has encouraged more “joined-up government”. Whilst this is an excellent arrangement for those departments which can afford membership, it has not encouraged membership from those smaller departments where funding has been an issue.

5. Q2. The OS has introduced a more stringent dispute resolution procedure which escalates issues up to ministerial level if required; however this process could hardly be described as independent. Since the MOD and OS are not in competition the need for such a process has not arisen in our relationship.

GEOGRAPHIC PANEL

6. Q3. The GI Panel has been in place for two years, and policy guidance has been provided via the UK GI Strategy, however the level of visibility and guidance provided to the user community has been disappointing. Indeed, the UK GI Strategy does not appear to have progressed much beyond the Chorley Committee several years ago. MOD awaits clarification on the way ahead following the next GI Panel meeting.

7. Q4. The GI Panel’s membership is heavily biased towards the public sector and representational organisations (eg AGI, RICS). There is relatively little private sector involvement in the GI Panel, and disappointingly none at all from those areas where MOD believes that business interests in geographic information could be at its highest, eg transport companies, supermarkets, utilities, construction companies, etc. The Panel’s terms of reference do state that an example should be set by government bodies, perhaps providing a slim rationale for the high level of government representation, however MOD considers there is a lack of balance.

8. Q5. It would not be appropriate for the single head of an organisation with a strong commercial interest to deliver advice to the government on all aspects of survey, mapping and geographic information. Such advice should come from government specialists or a committee of suitably qualified government representatives.

NATIONAL INTEREST MAPPING SERVICES AGREEMENT (NIMSA)

9. Q6. The ending of the NIMSA will have a significant impact on OS, however this has not happened suddenly, and OS have used the time to undertake consultation with their major customers and seek views on alternative measures to reduce their costs whilst continuing a service. However it is clear that the OS will not be able to finance all of their previous activities and hence will need to change their business practices. This will inevitably result in reduced maintenance of the national geographic database unless a new source of funds is identified (or the government could reduce the annual dividend that OS are mandated to deliver).

10. Q7. The ending of NIMSA will impact the currency of the rural database used to generate mapping. It has been stated by the OS that they will attempt to find a more automated and hence cheaper way of reviewing and revising the rural and mountains and moor land areas and that the current date ranges of five and 10 years respectively for retaining currency of that data will be affected as little as possible. This intent has not as yet been proven.

11. [***]

12. Q8. Not applicable as MOD is not a local authority. However MOD was particularly pleased to hear that the Mapping for Emergencies service was to be continued and funded by OS for the future. It is however expected that prices will rise on all products.

COMPETITION

13. Q9. The license costs imposed by the OS are particularly high and where data is not covered by the advantageous Pan Government Agreement, public bodies are paying very high prices or even finding the data to be unaffordable. Thus some government users are being denied access to this particularly valuable data.

14. MOD believes the problem here comes back to the boundaries issue. Perhaps it is time for OS to split in two to have a government funded national geographic database capability and a separate commercial arm which exploits that data, with the same licence conditions as applied to any other commercial user. As the MOD is not a commercial competitor it has not been affected by this aspect of the OS role.

15. MOD believes that the important needs of Government need be fully understood in the debate about the future of the OS and its national geographic database.

Memorandum by Dr Pauline Pollard

I welcome the opportunity to submit evidence to the Communities and Local Government Select Committee review of the impact of the recommendations made in the House of Commons Transport, Local Government and the Regions Committee published on 22 June 2002.

I have taken an interest as an Information Systems practitioner and as an academic in the issue of geographic information and public policy since 1986. During the period 2005–2006 I interviewed 60 people with interest in geographic information policy including: civil servants, executive agency staff, local authority staff and people from the private sector. This also included a majority of the GI Panel members and the views of other stakeholders about this Panel. I am currently an academic observer on the review of the Public Sector Information (PSI) Directive implemented to create a level playing field in the re-use of PSI.

I have responded below to the review under the four topic headings proposed.

1. THE DISTINCTION BETWEEN ORDNANCE SURVEY'S PUBLIC INTEREST AND COMMERCIAL OPERATIONS

The Government in its response to the select committee's recommendations stated its policy for Ordnance Survey: "its primary focus is on the collection, maintenance, marketing and licensing of appropriate national geospatial datasets that underpin policy, planning and operations across the complete range of public and private sector activities . . . [It would] introduce new geographical information and mapping-related products to meet essential national requirements or changing customer needs" (ODPM, 2002).

There is no clear definition of the public versus private task and Ordnance Survey is responsible for determining which products, their specification and their terms of exchange. It must make a return to the Treasury. Set up to operate as a public sector commercial enterprise there has been confusion within and around government between what Ordnance Survey's role is as regards its public task and its role to provide a financial return to the Treasury. There needs to be clarification regarding this as the lack of clarity has a significant impact both on the development of information sharing for e-government and on the geographic information market in the UK.

It also may impact on the development of common policies within European Union with a possible consequence for the development of cross-border environmental datasets under the INSPIRE Directive and for the meeting of the Lisbon objectives to develop the European Union as a leading knowledge economy by developing a market in public sector information. Its requirement to make a financial return led

Ordnance Survey to lobby for amendments to EU policies that enable its own survival as a Trading Fund. Whilst it is entitled to do so, and UK policy is to cost recover, the lobbying has been questioned by stakeholders within the public and private sectors.

There are alternative models. Some countries have legally separated the public task from the commercial task. Others do not commercially exploit public sector information.

E-government

Geographic information has long been recognised by members of the Association of Geographic Information (AGI) as essential to information sharing for both service planning and service delivery. In 2004, the e-government unit recognised its significance, and carried out a survey on geographic information use—promising an analysis and recommendations. However, the published survey report contained neither (Cabinet Office, 2005b). In response to an enquiry regarding the role of the Ordnance Survey in changing the content of the report, the Cabinet Office replied that Ordnance Survey is part of government advising colleagues where it has expertise. However, the changes to the report raise a question regarding the implications for e-government of Ordnance Survey’s advisory role when it is also a trading organisation.

In 2005, the e-government unit published its e-government strategy aimed at making government “transformational” by moving to a shared services culture. Identifying the need to resolve costly delivery failures it recognised the importance of information management and the “crucial” role of geographic information within this. However, rather than address this, it promised a geographic information strategy developed by the GI Panel (Cabinet Office, 2005). The role and independence of the Panel is discussed in response 3).

In response to the e-government strategy consultation it is notable that the Ordnance Survey urged that intellectual property should be protected so as to realise the benefits of a shared services culture which “requires the unimpeded flow of information between organisations” (Shiell, 2006). The AGI drew an opposite conclusion identifying intellectual property rights as one of the “biggest constraints” to data sharing (AGI, 2006). An example, of the constraints of IPR can be seen in the conflict over the licensing of use of Ordnance Survey data in the local government address dataset.

The address dataset

In the early 1990s local government began to develop a robust, low-cost spatial address dataset to a British Standard. Although involved with this project, Ordnance Survey entered the market to develop a product based on the postal address file (which itself originates from local authority data). It was able to enter this commercial market because the government placed no boundaries on Ordnance Survey’s remit.

When Intelligent Addressing created the local government address product it utilised the Ordnance Survey dataset as a source. In doing this it became responsible for payment of a licence fee. However, in attempting to licence the local government address dataset Intelligent Addressing has complained of restrictive licensing practices by Ordnance Survey. A complaint upheld by OPSI (Office of Public Sector Information, 2006). A recent ruling by the appeal body APPSI, contrary to the agreement of both parties in the dispute that the address dataset is a public sector task, has determined that the Ordnance Survey address dataset has been developed outside of the public task and is therefore not subject to the PSI regulations.

The issues around the address dataset are particularly significant because this dataset did not derive from Ordnance Survey’s original role in mapping. It was a new market and in electing to go into this market it went into competition with local government who had identified that for its own requirements (and those of government) a dataset based on PAF would be insufficiently robust. The decision therefore created a conflict between two public sector bodies that has had implications for e-government service delivery and for the private sector. Depending on the final outcome, there are potentially significant costs for users in re-designing databases (Drew Smith et al. 2004). However, government is not seeking to resolve the issue—leaving it for the market to resolve despite the potential cost to the public sector (GI panel website).

2. THE NATIONAL INTEREST MAPPING SERVICE AGREEMENT (NIMSA)

The decision not to renew the NIMSA with Ordnance Survey is appropriate. It was conceptualised in the 1990s as a means for supporting Ordnance Survey in its public task where activities were considered uneconomic, but the implications of cross-subsidy for the development of a geographic information market can not be ignored. For example, NIMSA was used to fund rural addressing whilst Ordnance Survey’s competitor in the production of a national spatial address dataset has not received funding. This is particularly ironic, if indeed, the Ordnance Survey dataset was developed outside of the public task. Specific national interest mapping services can be more appropriately obtained through a public procurement process.

3. THE ROLE OF THE GEOGRAPHIC INFORMATION (GI) PANEL

The select committee recognised a contradiction in Ordnance Survey's role as both provider and GI adviser in its proposal for a GI Panel. Stage 2 of the quinquennial review reinforced this:

“It [Ordnance Survey] cannot reasonably be expected to offer impartial advice on issues affecting its own future role or commercial interests”. (National Economic Research Associates, 2002).

The consultants proposed a fully independent body to advise government on geographic information issues and identified that Ordnance Survey itself was developing commercially but in a national policy vacuum. A conclusion I had also reached (Pollard, 1997).

The government accepted the select committee's recommendation, but, the implementation of this has been disappointing. In particular, attention has been drawn to the failure to set the panel up as an independent public body whose membership selection is supervised by the Cabinet Office.

By not setting it up as public body, the ODPM was able to select the Chair rather than the Chair being selected by the Panel. A civil servant has indicated that the Director General had a strong view that as GI adviser to government she should be chair. However, as one government member of the Panel said:

“If I was chief executive of the Ordnance Survey I would expect to be chair . . . But given the reality and the politics and the commercial pressures on Ordnance Survey there is a contradiction there and a suspicion which is going to get in the way.”

A non-government member of the Panel identified the conflict of interest that arises from the contradiction between the public and commercial task:

“I think one of the difficulties that all of these government departments that are also Trading Funds have, is that they have to wear ‘two hats’ all the time”

Another senior civil servant commenting on Ordnance Survey lobbying on European policies asked:

“How can the Ordnance Survey lead the geographic information issues when there is a conflict of interest between its public sector role and its commercial role?”

Attention has also been drawn to the composition of the Panel. Whilst it was promised the Panel would be a broad representation of key interests groups, 9 of the 13 members are public servants—mostly with responsibility as data providers rather than as data users. There is again a concern about the role the Ordnance Survey plays in panel selection; and one civil servant acknowledged that the minister would “wish to consult with the Chair of the Panel on any question of membership”. A non-governmental Panel member identified the implications of this:

“It could be perceived to be an Ordnance Survey based committee. To be driven by Ordnance Survey . . . Therefore it may appear to an outsider to be constrained in its view of the economic benefits to the nation”.

Members of the Panel recognise the role of geographic information in sharing information for e-government service delivery and have focused on the development of a geographic information strategy. However, others doubt that such a top-down approach to strategy will be effective (AGI, 2006).

It is to be noted that Panel is not able to manage controversial issues. On the EU INSPIRE Directive the GI Panel minutes recorded only that they would be unlikely to reach agreement. When the collapse of the National Spatial Address Infrastructure occurred it was suggested the Panel could hold an enquiry but it chose not to do so—although it had not heard views from local government or the private sector (GI Panel minutes).

It is uncertain what the Panel can achieve. As one government panel member reflecting on the power invested in the Panel said:

“It is advisory. Unless a senior policy department takes on at a senior level responsibility for geographic information then it will remain as a technology “looking for air time”.

Other stakeholders express similar concerns:

“People are expecting a lot of it but it has no clear remit. No resources. It only meets quarterly. Who are the members—are they individuals or representatives of particular sectors? What's its status in ODPM . . . What is required is leadership.”

The question of how to develop a national geographic information policy was addressed by the House of Lords Committee of Enquiry chaired by Lord Chorley in 1987(Chorley, 1987). This committee was concerned that the data suppliers might stifle innovation and it sought to ensure that the user view be bought into focus. It proposed a funded national centre responsible for developing national geographic information strategy independent of the Ordnance Survey. The government determined a national centre wasteful.

The public sector reforms that led to the creation of executive agencies, like the Ordnance Survey, are premised on an administrative concept of a purchaser-provider split in which the provider is held at arms-length from government and policy making is the responsibility of the purchaser. It would be more appropriate in a market model if this division were strictly enforced in the case of Ordnance Survey.

4. ORDNANCE SURVEY'S COMPETITIVE POSITION IN THE GEOGRAPHICAL INFORMATION MARKETPLACE

The case for the Treasury's cost recovery model has not been established. In 2000, the EU member states agreed to build Europe as a knowledge economy and the European Commission promoted a Directive for charging for PSI at the cost of dissemination as beneficial for economic growth. Research, comparing the PSI market in the EU with the market in the USA, provided support for this view (Pira International, 2000).

Responding, the UK Treasury acknowledged that Trading Funds, like Ordnance Survey, hold a dominant market position. They could charge high prices to a low volume captive primary market thereby meet their costs without widening PSI use. The Treasury retained Trading Funds but identified the need for further research to consider the economic issues around charging for the economy as a whole.

This need for a review of the economics of information pricing was reiterated in 2006 by the Office of Fair Trading (OFT) in its market study on *The Commercial Use of Public Sector Information*. It drew attention to the need for joined up policies which considered the conflicting aims of e-government for wider use of PSI and the use of targets for income generation (Office of Fair Trading, 2005).

In the meanwhile, the Ordnance Survey continues to hold a dominant market position and there remains little market choice for its primary customers. Ordnance Survey contributes a substantial sum to the Treasury, but, a significant percentage of its revenue comes from its captive public sector customers. There are many hidden costs to public sector customers in the procurement process (particularly for local government where each local authority has to engage in the process) and drawbacks caused by limits to sharing through copyright issues. Customers complain of long procurement documents, costly changes to web services to meet royalty payments and copyright agreements, and restrictions on who may use data.

Given the lack of a market in many Ordnance Survey products these costs do not necessarily lead to the benefits to users claimed by government in terms of product pricing and quality. In addition, there are cost implications in lobbying, sales staff, legal services and in the development of regulatory regimes. Any review needs to consider these aspects.

Many private sector customers consider the costs of Ordnance Survey products too high. They point out that the products are developed for the public sector and are over specified for their needs. They would purchase the products but not at the prices at which they are made available. I have spoken to private sector customers who have found it cheaper to fund their own planes for aerial photographs rather than pay the full costs of Ordnance Survey products.

The OFT market study criticised all the Trading Funds for high pricing, restrictive licensing and inadequate quality but it was particularly critical of Ordnance Survey. It pointed to the nature and seriousness of many of the problems experienced by users and its resistance to regulation. It considered that an information market should operate on a fair, efficient and competitive basis and expressed concern about the lack of government guidance on how to achieve this. The government has failed to meet its statutory requirement to reply to the OFT market study within 90 days.

It is worth noting that the OFT market study was carried out after the PSI Directive came into force with an aim of creating a level playing field to enable the wider re-use of PSI. The EU is currently monitoring the impact of the Directive on the information market. It is, however, unlikely that a public sector information market will develop unless there is a change of culture in the member states with more understanding of the importance of the role of information in the knowledge economy. Within UK government it is also hard to envisage a significant change of policy unless the Treasury view is challenged at a political level or a review is carried out that identifies the economic benefits of a different pricing approach. .

Summary

In conclusion, there continues to be an urgent need for a review on public sector information policy that is comprehensive in its approach. Such a review needs to develop a "joined up policy" that resolves conflicts between policies and ensures that the transformational government initiative is not hampered by lack of information sharing capacity. It should ensure that there is a review of the economics of information pricing as promised by the Treasury in 2000. If a market model is to be maintained then the government needs to ensure that there is sufficiently robust regulation and enforcement regime to ensure that there is a level playing field in the use of public sector information so that the private sector can develop information products.

Thank you for the opportunity to provide evidence to the committee.

Memorandum by Chris Corbin

I welcome the decision of the Communities and Local Government Select Committee to undertake a review on the impact of the recommendations made in the House of Commons Transport, Local Government and the Regions Committee (Hoc TLR-C)—Ordnance Survey, Tenth Report of Session 2001-02 published on 22 June 2002 and the opportunity to submit evidence to the Committee.

PERSONAL BACKGROUND TO SUPPORT SUBMISSION

During 2002 as Chair of the Association for Geographic Information (AGI) I submitted supplementary evidence regarding a number of European Union (EU) Directives and initiatives to the Ordnance Survey Inquiry.⁴⁷ I am no longer a member of the AGI⁴⁸ and as such the views expressed in this submission do not represent those of the AGI.

I have been involved with public sector information and in particular geographic information for over 40 years and I am currently employed as an analyst in the European Union eContent^{plus} funded project ePSI^{plus}—Towards the 2008 review of the Directive on PSI re-use.⁴⁹ I have been employed in a number of other EU projects that relate to public sector information policy and geographic information. These projects have included:

GINIE: Geographic Information Network in Europe, duration 2001 to 2004.⁵⁰

MEPSIR: Measuring European Public Sector Information Resources, 2005–2006.⁵¹

I have also been involved and provided evidence to:

ePSINet: Towards the implementation of the Directive on PSI re-use, 2002 to 2005.⁵²

SPREAD: Stimulate and promote good practice in the field of digital content in Eastern and Western Europe, 2004 to 2005.⁵³

OECD Working Party on the Information Economy—PSI Information and Content 2006.^{54 55}

1. SUMMARY

1.1 Legal frameworks brought in through EU legislation have complemented the HoC TLR-C Conclusions published in June 2002. One consequence of these legal frameworks has been the establishment in the UK of a new Regulator (OPSI) that has Memorandums of Understanding in place with two other regulators namely the OFT and the ICO which enables complaints to be moved between the Regulators. An appeal process has also been established via APPSI. Both the OPSI and the APPSI have received and processed complaints related to the OSGB. Further changes as a result of recent EU laws (INSPIRE) will be required which will have a direct bearing on the Committee's review.

1.2 The Government's response to the HoC TLR-C Conclusions was in some cases not in accordance with the legal frameworks and Guidelines that existed when the Government responded. Subsequent legal frameworks have not supported the conclusions the Government reached nor have the assessments reached by the Regulators especially those related to market competition.

1.3 A number of the HoC TLR-C conclusions have been enacted upon by the combination of the Department (DTLR, ODPM, DCLG) and the OSGB. In implementing the HoC TLR-C conclusions the Department has not complied with the law related to the conduct of Public Sector bodies or the Guidelines related to the establishment of Advisory bodies. The Department has in some cases recently corrected their earlier actions and they now comply with the law (Reference the PGA2 procurement). As a consequence both the geographic information market in the UK and Government initiatives related to improving the efficiency of government through the exploitation of ICT have been affected and or set back.

1.4 The OFT has reported on their Market Study on *The Commercial Use of Public Sector Information (CUPI)* which has reported on potential competition infringements by the OSGB. The Government has failed to respond to the OFT CUPI report within the statutory timeframe, which is regrettable as this indicates that the Government and its supporting administration place themselves above the laws in force within the UK. Such delays have a direct impact on the geographic information market.

1.5 The European Commission Regulatory body related to ensuring the principles of the Single Market, public sector procurement, and subsidies are complied with has also processed complaints related to actions taken by the Department and the OSGB.

1.6 The number of questions related to the actions of the Department and the OSGB have continued to be asked in both the HoC and the HoL which is in itself an indicator that issues exist that have an impact on the geographic information market and other Government led initiatives.

1.7 Within Government and its administration there still exists genuine confusion regarding the role of the OSGB as to whether it is acting in the public good or acting commercially. This is an area that requires urgent attention as it has and continues to have a major impact on the geographic market here in the UK

⁴⁷ Tenth Report (HC481) OS13 (a) & (b) pages Ev 88 and 89.

⁴⁸ I served as an elected member of the AGI Council from 1 January 1995 through to the 31 December 2004.

⁴⁹ http://www.epsiplus.net/epsiplus/contacts/epsiplus_network_team_analysts/chris_corbin

⁵⁰ <http://www.ec-gis.org/ginie/documents.html>

⁵¹ [http://ec.europa.eu/information_society/policy/psi/library/index_en.htm#MEPSIR_Study,_2006_\(PDF—files\)](http://ec.europa.eu/information_society/policy/psi/library/index_en.htm#MEPSIR_Study,_2006_(PDF—files))

⁵² <http://www.epsigate.org/index.htm>

⁵³ <http://www.ubique.org/spread/>

⁵⁴ http://www.oecd.org/document/17/0,3343,en_2649_201185_36860241_1_1_1_1,00.html

⁵⁵ <http://www.oecd.org/dataoecd/34/42/37865140.pdf>

to the detriment of UK plc. As a consequence considerable resources are being diverted to non-productive activities both within the public sector and private sector to address the issues that arise. It is notable that other Countries in recent years have either separated out the public task and the commercial task into separate legal public sector entities or abandoned the principle of acting commercially with respect to public sector information.

1.8 Research and evidence is building that indicates that when ever a public procurement for geographic information complies with the EU law that results in an outcome that is not favourable to the OSGB (not all lots are awarded to the OSGB) that excessive delays occur for example the Local Government Mapping Service Agreement (MSA) and the PGA2. Delays have also occurred in other areas that involve the OSGB for example the time taken to reach agreement and publish the current OSGB Framework document.

1.9 The Department's decision not to renew NIMSA but to let specific open competition contracts where necessary is correct.

1.10 Despite all of the developments outlined above there remain real issues with respect to the OSGB and its responsible Department that are damaging both the geographic information market and the public sector. As such the five-year review by the Committee is timely.

2. PERTINENT LEGISLATIVE CHANGES SINCE JUNE 2002

Re-use of PSI

2.1 The EU Directive 2003/98/EC⁵⁶ on the re-use of public sector information came into force within the EU on 31 December 2003 and within EU Member States on 1 July 2005. The UK transposition Statutory Instrument 2005 No 1515 The Re-use of Public Sector Information Regulations 2005 came into effect on 1 July 2005. The Office of Public Sector Information (OPSI) was established during May 2005 and is in effect the Regulator appertaining to the re-use of Public Sector Information.

2.2 SI 2005—1515 established a formal complaints process within OPSI with an appeal process via the UK Advisory Panel for Public Sector Information (APPSI). Furthermore the OPSI established Memorandum of Agreement's with the UK Office of Fair Trading (OFT) and the Information Commissioners Office (ICO) and as such established a unified interface for the processing of complaints.

2.3 The above combination of the framework legislation together with the complaints and appeals process met in outline HoC TLR-C Conclusions (a), (c), (e) and (f).

INSPIRE

2.4 The EU Directive 2007/2/EC on establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) came into force within the EU on 15 May 2007 and is due to come into force within the UK by 15 May 2009 at the latest.

2.5 The INSPIRE framework requires a national co-ordinating structure to be put into place and as such relates to HoC TLR-C Conclusion (g).

Public Sector Procurement

2.6 The EU Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts came into force within the EU on 30 April 2004 and within EU Member States on 31 January 2006. The UK enforcement body is the Office of Government Commerce (OGC).⁵⁷ Directive 2004/18/EC replaced the EU procurement laws that were in effect within Member States when the HoC TLR Committee published its Conclusions in June 2002.

2.7 The Public Sector procurement Directive applies to HoC TLR-C Conclusions (d).

Financial Transparency

2.8 The EU Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings came into force in all Member States on 20 December 2006.

2.9 Directive 2006/111/EC is a codified version that consolidates Directive 80/723/EEC and the subsequent amendments into one updated document and as such repeals all previous versions. As preamble (1) states this has been done in the interests of clarity and rationality. Directive 80/723/EEC was published in the Official Journal of the European Communities on 29 July 1980 and came into force into all Member

⁵⁶ <http://www.opsi.gov.uk/advice/psi-regulations/eu-directive-on-psi.htm>

⁵⁷ http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_european_procurement_directives.asp

States on 31 December 1981. As such the Public Procurement laws were in force when the HoC TLR-C published its Conclusions in June 2002. Within the UK the Department of Trade and Industry has responsibility for implementing the Directive.⁵⁸

2.10 The Financial Transparency law applies to HoC TLR-C Conclusions (c).

EU Treaty Article 82

2.11 EU Treaty Article 82⁵⁹ trading organisations in a dominant position may not abuse that position. Article 82 has been in force since 1957 and was in force when the HoC TLR-C published its Conclusions in June 2002. The enforcement body (Regulator) within the UK is the Office of Fair Trading (OFT).

2.12 The above raises a number of points that the committee may wish to consider and note.

1. Guidelines and Processes that existed at the time the HoC TLR-C published its report in June 2002 complement the legal frameworks outlined above in the EU & UK. Over the past five years a number of these guidelines (good practices) have been reviewed via open consultation by the Government and improved or adapted to current conditions. In particular the processes related to HoC TLR-C Conclusions (c), (d) and (g). The Guidelines are published and available on the Cabinet Office web site. These Guidelines have been developed through practical experience as well as open and democratic processes using public funds and the taxpayer would rightly expect Departments and Executive Agencies to abide by these Guidelines. For example the process of establishing the Geographic Information Panel (GIP) was not in accordance with the Cabinet Office Guidelines on public appointments. It is not at all clear why the Department (DTLR, ODPM, DCLG) did not follow the set down processes and guidance. It is interesting to note over the same period that Her Majesty's Stationery Office (HMSO) now known as the Office of Public Sector Information (OPSI) established the Advisory Panel for Public Sector Information (APPSI) in accordance with the Cabinet Office procedures and as such the APPSI has a level of credibility that the GIP has not managed to achieve due in part to the process of establishment, appointment and maintenance that is the rotation of appointed members and the publication of the financial accounts (financial transparency). Both panels report to Ministers and both panels have an advisory role.
2. The legal frameworks that now exist on the statute book endorse a number of the Conclusions reached by the HoC TLR-C in particular Conclusions (a), (c), (e), (f) and (g). The Government's response⁶⁰ to the HoC TLR-C Conclusion (c) is not in alignment with the legal frameworks.
3. A number of the legal frameworks existed at the time the HoC TLR-C published its report in June 2002 and as such the HoC TLR-C report was indirectly indicating (as the report made no direct reference to the existing EU and UK laws) that the combination of the Department of State (DTLR, ODPM, DCLG) and the Executive Agency (Ordnance Survey of Great Britain (OSGB)) that the Department has responsibility were not being complied with in particular Conclusion (c).
4. The above brief summary would suggest that rather than generate yet further legal frameworks and guidance there is an urgent need for compliance to be enforced with respect to the existing laws and frameworks combined with a more rigorous scrutiny both by Parliament and bodies such as the National Audit Authorities.

3. PAN-GOVERNMENT AGREEMENT—(CONCLUSION D)

3.1 The Pan-Government Agreement was established but the process did not comply with the EU Procurement law in that it was not open to competition. The basis for not complying with the EU Directive was that both the Department of State concerned—the procurer (DTLR then ODPM) and the Ordnance Survey of Great Britain—the supplier, are public bodies under the Crown (confirmed by the fact that Crown Copyright applies in both cases). As such these two bodies are exempt from the EU Public Procurement Directive as they are part of the same family of public bodies.

3.2 However the Pan Government Agreement supplied a substantial number of other public bodies that were not under the Crown for example the Environment Agency. It is the latter aspect that resulted in non compliance with the EU Public Procurement Directive.⁶¹

3.3 The European Commission (EC) Internal Market and Services Directorate's Public Procurement Policy enforcement Unit received a complaint in July 2003 and the decision reference number 2003/4786 upheld the complaint that the Pan-Government Agreement did fall within the remit of the EU Public Procurement Directive due to the wide range of public bodies and their sub contractors being beneficiaries

⁵⁸ www.dti.gov.uk/files/file37723.pdf

⁵⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002E082:EN:NOT>

⁶⁰ Cm 5641 November 2002 ODPM.

⁶¹ HoC TLR-C Tenth Report, page 10 paragraph 15 “. . . 500 government bodies”.

under the Pan-Government Agreement. The details and the decision related to *Complaint 2003/4786 — Ordnance Survey—Pan-Government Agreement—Public Procurement* are available from the EC Enforcement Unit in Brussels.

3.4 As a result of the EC intervention the Office of the Deputy Prime Minister (OPDM) placed a notice in the Official Journal of the European on 25 August 2005. The process that was initiated by the notice resulted in only two lots being met both of which are provided by the private sector data providers. The procurement is still in process.

3.5 The above raises a number of points that the committee may wish to consider and note.

1. It is assumed that the HoC TLR-C in publishing Conclusion (d) in June 2002 was not implying that the DTLR did not need to comply with the EU and UK Public Procurement laws, procedures and good practice.
2. The Pan-Government agreement did not cover the procurement of Aerial Photography due to the complaints and Court Injunction between Get Mapping plc—Ordnance Survey of Great Britain. (Conclusion (f)). It was apparent that there were at least three private sector companies able to provide aerial imagery.
3. The Pan-Government agreement⁶² although entered into for a fixed period is still running in that it has been extended more than once by the OPDM and its successor DCLG. As the procurement did not comply with the EU Public Procurement law this in effect means that the geographic information market has been impacted (distorted).
4. The second Pan-Government agreement (PGA2) that did abide by the EU Public Procurement laws (even though at the current time it has not been concluded) has demonstrated that other suppliers do exist within the geographic information market both within the public and private sectors and that given the opportunity to bid that they do so. Thus value for Money can be demonstrated but only if open competition exists.
5. The second Pan-Government agreement (PGA2) includes a lot for Address data that maybe sourced from at least two public sector bodies or their agents. The first from Local Government via Intelligent Addressing for the National Land and Property Gazetteer. The second from OSGB for MasterMap Address Layer 2.⁶³ Both of these come under the DCLG and are also the subject of a complaint under the PSI Regulations⁶⁴ and the OPSI Information Fair Trader Scheme (IFTS).⁶⁵ The OFT Market Study report *The Commercial Use of Public Information (CUPI)* also refers and raises potential competition issues. The Intelligent Addressing complaint remains open even though it was upheld. The UK Government has not responded within the 90 calendar days to the OFT CUPI report and as such remains open. One result of the above is that competition within the geographic information market has been distorted.

4. THE NATIONAL INTEREST MAPPING SERVICE AGREEMENT—NIMSA (CONCLUSION C)

4.1 The HoC TLR-C Conclusion (c) was not met throughout the lifetime of NIMSA. The published Annual Accounts of the OSGB have not complied with the legal requirement for financial transparency in that only the total amount of the NIMSA subsidy received each year has been reported. The NIMSA payment in the context of the OSGB Annual Profit & Loss accounts is significant as TABLE 4.1 shows and as such demonstrates the need for financial transparency with respect to any cross-subsidisation that maybe taking place.

Table 4.1

NIMSA DETAILS OBTAINED FROM OS-GB PUBLISHED ANNUAL REPORTS

<i>NIMSA Year</i>	<i>Year</i>	<i>Received for NIMSA</i>	<i>Accumulated Total</i>	<i>Operating Surplus*</i>	<i>OS Total Turnover</i>	<i>Less NIMSA</i>
1	1999–2000	£14,616,800	£14,616,800	£12,484,000	£99,586,000	£84,969,200
2	2000–2001	£13,454,136	£28,070,936	£27,342,000	£98,558,000	£85,103,864
3	2001–2002	£15,987,245	£44,058,181	(–£7,562,000)	£102,631,000	£86,643,755
4	2002–2003	£12,546,480	£56,604,661	(–£2,213,000)	£108,042,000	£95,495,520
5	2003–2004	£12,820,427	£69,425,088	£5,582,000	£116,280,000	£103,459,573
6	2004–2005	£13,179,461	£82,604,549	£9,177,000	£114,738,000	£101,558,539
7	2005–2006	£10,925,516	£93,530,065			
	Total to date	£93,530,065		£44,810,000		

* Surplus/Deficit(–) on ordinary activities before interest and exceptional items.

⁶² <http://www.iggi.gov.uk/pg2.php>

⁶³ <http://www.ordnancesurvey.co.uk/oswebsite/products/osmastermap/layers/addresslayer2/>

⁶⁴ <http://www.opsi.gov.uk/advice/psi-regulations/reports.htm>

⁶⁵ <http://www.opsi.gov.uk/ifts/index.htm>

4.2 Over the lifetime of NIMSA the Department (DTLR, ODPM, DCLG) has only published five NIMSA annual reports.⁶⁶ The Department published these reports towards the end of the period. TABLE 4.2 shows that the financial reporting improved following the publication of the HoC TLR-C report. The financial information provided however, is not sufficient to meet the requirement of transparency with respect to cross-subsidisation between the public task and the commercial activities.

Table 4.2

<i>Financial Year</i>	<i>Financial Information included</i>
NIMSA Annual Report 2005–06	Financial breakdown provided
NIMSA Annual Report 2004–05	Financial breakdown provided
NIMSA Annual Report 2003–04	Financial breakdown provided
NIMSA Annual Report 2002–03	Financial breakdown provided
NIMSA Annual Report 2001–02	Financial totals only
NIMSA Annual Report 2000–01 Not published on the DCLG web site.	Financial totals only

Available via FOI Request to OSGB

4.3 The National Interest Mapping Service Agreement signed between the Customer (DETR) and the Supplier (OSGB) has not been placed in the public domain even though this is not a commercial arrangement but a National Interest (Public interest) agreement. The signed Agreement provides the basis for assessing whether the services defined in the Agreement have been delivered in accordance with the Agreement. The Agreement (Released by the OSGB in respect to an FOI request Number 41577) shows that the Agreement was still being varied even though the Agreement had come into force as shown in TABLE 4.3. Schedule D of the Agreement documents the Profile of proposed NIMSA services and costs 1999/00 to 2005/06 is shown in Annex A of this submission. Schedule D highlights the need for financial transparency in respect of cross subsidisation as a number of entries will be common to the OSGB computerised databases for example Corporate Data Management, Technical security.

Table 4.3

<i>Version</i>	<i>Date</i>	<i>Description</i>
1.0	October 1998	First issue
1.1	February 2000	Replacement pages E.1 and E.2*
1.2	February 2001	Complete reissue

* Schedule E: Terms of Reference for the NIMSA review group.

4.4 NIMSA was for a seven year period from April 1999 through to the end of March 2006. The DCLG in the October statement on NIMSA states that NIMSA funding will end on 31 December 2006—an overrun of eight calendar months. The trend within Government to extend supply agreements and contracts that are not open to competition distorts the market.⁶⁷

4.5 The Government's response to the HoC TLR-C report recommendation (c) states:

“NIMSA charges are audited every year and have never been the subject of adverse audit comment since NIMSA was established on 1 April 1999”.

4.6 However the Annual NIMSA reports published contain no official Audit statement to corroborate the above statement. It is not clear from the published NIMSA annual reports what the Audit process involves. It is also not clear how the Department was ensuring value for money. Information released under the FOI Act, and in response to letters—refer Annex B; would indicate that the formal NIMSA Audit process was part of a much larger Audit process and that NIMSA itself was not subject to a specific Audit. The information provided indicates that the Department was not part of the Audit process.

4.7 Evidence on the Value for Money can be ascertained from at least two parts of NIMSA for example the metadata service (GIgateway) and the update or Rural Addresses. The metadata service was subcontracted to the Association of Geographic Information (AGI) in 2001. The AGI employed up to six people to manage and deliver the metadata services. A comparison of the AGI Annual Accounts published at Companies House with those of the NIMSA Annual reports published by the Department shows that the OSGB overhead of managing this contract was on average 33% even when the alignment of the financial years is taken into account.

⁶⁶ <http://www.communities.gov.uk/index.asp?id=1144581>

⁶⁷ The Future of the National Interest Mapping Services Agreement Beyond 2006. October 2006. Product Code: 06FAD04203.

Table 4.7

<i>Year</i>	<i>AGI received (Jan to Dec)</i>	<i>OS-GB Received (Apr to Mar)</i>	<i>OS-GB Handling</i>	<i>Percentage Overhead</i>
2001	£263,000	£393,333	£130,333	33.14%
2002	£278,000	£396,526	£118,526	29.89%
2003	£251,938	£403,775	£151,837	37.60%

4.8 The above raises a number of points that the committee may wish to consider and note.

1. The requirement for financial transparency has not been met.
2. The Department's management of NIMSA improved with time which maybe in response to the HoC TLR-C report as well as the ongoing external pressures for greater transparency.
3. The financial audit process is far from clear and as a result it is not proven that the value for money was being achieved.
4. NIMSA overran the seven year period which has an impact on the market.
5. The NIMSA consultation was not conducted in accordance with the Cabinet Office Consultation guidelines—refer Annex C of this submission.
6. In light of the above the Departments conclusions on the future of NIMSA in the October 2006 statement is correct in that requests for financial transparency have not been met, the value for money is questionable, NIMSA distorts the market. The Department decision in effect ensures compliance with the law. The Department then has the freedom to procure services that it deems are required in the National Interest via open competition.
7. The OSGB views NIMSA as a commercial contract as many of the documents held and referenced by the National Audit Office—Refer to Annex B that originate from the OSGB are marked Commercial in Confidence. If separate accounts were produced for the public task role and the commercial role then the necessity felt by OSGB to mark their documents as Commercial in Confidence would not be required.

5. OSGB ANNUAL REPORT AND FINANCIAL ACCOUNTS

5.1 The OSGB Annual Report and Financial Accounts are not transparent as required by EU legislation and HM Treasury requirements. In response to an FOI Act request HM Treasury states (Refer Annex D of this submission) that Trading Funds must ensure that their accounts are transparent with respect to subsidies received. The HM Treasury also states that it is down to the responsible Department (DTLR, ODPM, DCLG) to ensure that the Financial Accounts comply with the HM Treasury guidance.

5.2 With respect to HoC TLR-C Conclusion (a) prices—the OSGB Annual Report for the past six plus years contains an Adverse report from the National Audit Office regarding the value of the database. The Adverse report makes the point that this affects the price. In response to an FOI Act Request (Annex E) the National Audit Office states that has is still to be resolved.

6. COMPLIANCE WITH PSI REGULATIONS SI 1515—2005 (EU DIRECTIVE 2003/98/EC)

6.1 The PSI Regulations 2005 came into force on 1 July 2005. In January 2006 (seven months after the PSI Regulations came into force) the OSGB published a document titled Licence Exceptions (D03800.doc Jan 2006) that did not comply with the Regulations in a number of areas. For example:

“Please note that we may refuse a licence in certain circumstances including the following:

1. We may refuse to grant certain applications if:
 - your request to reproduce Ordnance Survey mapping falls outside Ordnance Survey's standard licensing terms and conditions; or
 - you want to market a product whose intended use is the same as, or comparable to, that of any product marketed by Ordnance Survey itself or any product which Ordnance Survey intends to market.”

“7. We will only licence Ordnance Survey published products. We will not licence mapping information which is used as part of our production flowline.”

6.2 The OPSI has subsequently taken the matter up with the OSGB with respect to ensuring compliance.

6.3 The above raises a number of points that the committee may wish to consider and note.

1. Where are the OSGB boundaries documented and set? The OSGB Framework document does not define them and the potential re-user of OSGB data according to Licence Exception Clause 1 bullet 2 has to guess where the OSGB boundaries are.
2. The Licence Exception may infringe EU Treaty Article 82 in that it is an abuse of dominant position.
3. The Licence Exception can be used to control the market, which is explicitly prohibited within the PSI Regulations. In this example the potential re-user of the OSGB data has to divulge their business plans and only then discovers whether the OSGB will licence the data, which it may refuse on the grounds that the OSGB is considering entering the same market!
4. The Licence Exception clause 7 defines the base line with respect to the PSI Regulations regarding refined and unrefined data from the OSGB's perspective, a point that the OFT CUIP report also considers.
5. zPublic sector resources have to be devoted to correct the situation, which should not have arisen in the first place. Whilst the matter is resolved the geographic information market is impacted.
6. The example is but one that demonstrates that the OSGB can introduce such documents without notice and in a time scale that verges on the instantaneous, yet the correction and or withdrawal takes an inordinate amount of time. This is visible (transparent) with respect:
 - To the OPSI Information Fair Trader Scheme (IFTS) reports where the OPSI requires the OSGB to change licences and other conditions that do not conform to the IFTS.
 - Resolving complaints upheld by the OPSI under the PSI Regulations.

7. MARKET IMPACT—LOCAL GOVERNMENT MAPPING SERVICE AGREEMENT

7.1 An analysis of the Local Government Mapping Service Agreement procurement clearly shows that the OSGB actions delayed the procurement. The difference between the timescales published in the Official Journal of the European Communities (OJEC) notice and the actual timescales are shown in the TABLES 7.1A and 7.1B.

Table 7.1A

MSA OJEC NOTICE

<i>Event</i>	<i>Date</i>
Reference	74274100
Type of Contract	Restricted Procedure
Period of Contract	1.04.04 to 31.03.07
Publication date of Notice	17.06.03
Closing date for obtaining document	14.07.03
Closing date for Expression of Interest	25.07.03
Dispatch of Tender document	10.10.03
Closing date for tender	21.01.04

Table 7.1B

MSA TIME ANALYSIS

<i>Date</i>	<i>Elapsed Days</i>	<i>Event</i>
17.06.2003	1	OJEC Notice Call for expression of interest
05.11.2003	141	Invitation to Tender issued
16.12.2003	182	Bids received (Tender closed)
20.02.2004	248	Preferred bidders announced
26.05.2005	709	Announcement MSA has been signed between the three suppliers and I&DeA
31.05.2005	714	LGIH dispatch LA MSA Agreements
31.07.2005	775	Deadline for LA's to return MSA 70% of fees threshold must be met
02.09.2005	808	I&DeA announces 99.46% of LA's had signed the MSA

7.2 The above raises a number of points that the committee may wish to consider and note.

1. The procurement was divided into Lots (as is recommended by UK OGC). Different lots were awarded to three suppliers—two from the private sector and one from the public sector (OSGB). Agreement was reached at an early stage with the two private sector companies that

covered the duration of the contract but protracted with respect to the public sector supplier (OSGB). Due to the construct of the procurement all three suppliers had to have reached agreement with the Local Government procurement body before the MSA could be presented to the individual local government bodies for signing. The cost of the procurement alone is estimated to be in the region of £10 million plus.

2. While the procurement process was under way the previous Local Government Service level Agreement where the OSGB provided all the data products—that was not awarded under open competition; continued in force, ie the OSGB continued to receive income. In contrast the private sector companies awarded the other lots could not proceed or receive income!
3. During the procurement process the OSGB announced new products that were not available at the time of the announcement. The products announced were competitive products to those already awarded to the private sector companies that the Local Government procurement authority had reached agreement.
4. Whilst the procurement was in process the OSGB together with the Department (DTLR, OPDM, DCLG) announced the National Spatial Address Infrastructure (NSAI). The Department on 1 June 2007 made an announcement that it will not proceed further with the NSAI!
5. The Department (DTLR, ODPM, DCLG) has experienced a similar delay with respect to PGA2. Whilst the delay continues PGA1 has been extended. ie the OSGB continues to receive income.
6. Although the market perception on the delays is one of anti competitive behaviour on the behalf of the OSGB it can also be taken as an indicator that the OSGB places contractual conditions on Customers that are unacceptable to their real world business requirements and as such indicates that the OSGB maybe abusing its dominant position.
7. In both the MSA and PGA the OSGB was the incumbent supplier to other parts of the public sector and as such the OSGB is in a position to not only maintain the income through delay but also able to use its relationship with the Minister and the Department (DTLR, ODPM, DCLG) to influence events. This clearly is not a level playing field with respect to the private companies that are OSGB's competitors. As such there is a market distortion. This situation is further distorted when the Director General serves a Chair of the GIP and previously was a member of the Departments board.
8. The same delaying technique is also apparent when Regulators require the OSGB to comply with their decisions.

8. LACK OF TRANSPARENCY—QUINQUENNIAL REVIEW STAGE 2

8.1 Although the conclusion of the OSGB quinquennial stage 2 pre dates the HoC TLR-C report publication it is notable that the OSGB quinquennial review stage 2 report produced by National Economic Research Associates has not been placed in the public domain even though quinquennial review stage 1 report has been. The review process was undertaken in the public interest using public funds and as such the document should be publicly available.

8.2 The lack of transparency with respect to the quinquennial review is yet another example of the lack of transparency and delays mentioned elsewhere in this submission. This demonstrates that there has been little change by the OSGB and the Department since the publication of the HoC TLR-C report. This not only impacts the geographic information market, public sector initiatives but as importantly that of accountability which weakens the democratic processes.

NOTE: Further supporting information can be provided to support the submission if required.

Memorandum by the Local Government Association (LGA) and the Improvement and Development Agency (IDEA)

The Local Government Association (LGA) promotes better local government. It works with and for member authorities to realise a shared vision of local government that enables local people to shape a distinctive and better future for their locality and its communities. The LGA aims to put local councils at the heart of the drive to improve public services and to work with government to ensure that the policy, legislative and financial context in which they operate, supports that objective.

The Improvement and Development Agency (IDeA) aims to make public services the best public services by supporting self-sustaining improvement from within local government. The IDeA works in partnership with all councils, to enhance the performance of the best, accelerate the speed of improvement of the rest, and develop the sector as a whole.

SUMMARY OF POINTS MADE IN THIS MEMORANDUM

- (a) Local Government is a major user of Ordnance Survey services and indirectly supplies addressing information to Ordnance Survey.
- (b) Geographic and locational information are important as enablers to effective and efficient public service delivery, and to helping citizens help themselves.
- (c) It is in the public interest to have a clear and cost effective approach to the availability and licensing of information where needed for public services.
- (d) IDeA has specific responsibilities to procure mapping services on behalf of all local government users, and is responsible for the National Land and Property Gazetteer that collates details of addresses of properties in every local area.

Question 1:

- (e) There must be a clear distinction between the public good function and commercial functions of Ordnance Survey: currently this is unclear and gives rise to disputes over intellectual property rights and licensing.
- (f) There should be robust, independent governance of principles such as data standards, effective use and accessibility of information in the public interest, and to ensure equity in distinguishing public and commercial interests.
- (g) Certain locational data falling within Ordnance Survey control and licensing should be treated as public good services, including some standard geographies used for presenting information, and addressing and property location.

Question 2:

- (h) Recent steps to establish effective arbitration are welcome but need strengthening and the roles of the various bodies concerned clarified.

Question 3:

- (i) The Geographic Information Panel has been valuable in driving work so far in creating a UK Geographic Information Strategy. The Panel should be time limited: the strategy will need a different governance structure. Whilst in existence, the Panel should set a yearly plan with targets and produce an annual report outlining achievements.

Question 4:

- (j) The balance between public and private sector representation on the Geographic Information Panel is broadly acceptable. However, membership needs at least one person selected for expertise in innovation, and the Panel would benefit from further public service delivery experience.

Question 5:

- (k) It would not be appropriate to have the head of a fully commercial organisation as the sole government adviser on all aspects of survey, mapping and information: consideration should be given to a clearer separation of Ordnance Survey public good and commercial functions.

Question 6:

- (l) We do not have evidence to assess the impact of removing the NIMSA subsidy but would be concerned at any diminution in the quality of products covering rural areas that impacted on service quality, and particularly in relation to the emergency services. Accurate monitoring is needed to provide evidence to show how product quality is being sustained.

Question 7:

- (m) We cannot answer this: the cost for local government is determined by a procurement that runs to 2009. Ordnance Survey pricing should provide clarity about whether there is uplift in costs as a result of NIMSA withdrawal.

Question 8:

- (n) Ordnance Survey business models, and licensing controls give a controlling position over potential commercial competition. A vibrant and competitive market in the use and development of geographic information would be of benefit to local government and therefore to both citizen and taxpayer.

MEMORANDUM

Context

1. The Local Government sector is a major customer and user of Ordnance Survey services. It is also, indirectly, a supplier of certain information to Ordnance Survey, particularly in relation to addressing.

2. The role of data, statistics and information, including geographic and locational data is growing as an enabler to effective and efficient public service delivery. This is brought into sharp focus as citizens increasingly expect high quality, accessible, efficient and relevant services at reasonable cost, and by the fact that public expenditure is subject to considerable constraint.

3. Geographic information, including that provided through Ordnance Survey services, is an important, but still under exploited tool for public service planning, co-ordination and delivery at all levels. Geographic information aids understanding of the distinctive characteristics of place, community, economies and environments. It is therefore important to local service providers and procurers (including local government) in helping to respond effectively and efficiently to the varying needs of citizens and the circumstances of their lives.⁶⁸ This is crucial to successful “place shaping” which is at the heart of the local government remit as set out in the recent Local Government White Paper.

4. Local Government directly delivers or procures a diverse range of services. It is also the local integrator or key delivery partner for a much wider set of activities across the social, economic and environmental spectrum, engaging the public, private and voluntary sector partners in the process. This involves bringing together and making sense of the complex array of public policy levers that operate within any particular area, for example, through Local Area Agreements.

5. Access to, and the sharing of, location specific data and analysis is of increasing importance to local authorities. Neighbourhoods within local authorities have discrete and complex requirements even in comparing adjacent wards, and the correct base information to allow statistics from multiple sources (including census data) requires a robust geographic framework to support them.⁶⁹ For example, Local Strategic Partnerships need an evidence led approach in assessing the needs of local communities and targeting service provision. Standards for integrating this geographic information are important and need partnership between Ordnance Survey, the user community and the providers of the statistics (including Office for National Statistics). Geographic information provides:

- a diagnostic to inform service delivery;
- the means to assess performance and audit service delivery; and
- a means for the public to access up to date information eg on criminal activity, to enable them to take appropriate preventative action.

6. Also, where emergency services are needed, accessibility, accuracy and consistency of locational information is crucial and, in extremis, a matter of life or death. Further examples of the importance of geographic information include:

- The every child matters agenda,⁷⁰ where education, health and social services need to be co-ordinated and properly informed at the local delivery point by the best intelligence and data, particularly in relation to safeguarding matters.
- Waste and environmental health.
- Tackling crime and disorder.
- Co-ordinating the work of utilities by sharing information on cables, water mains, gas mains and telecoms lines and mapping this onto highways data: for example, to plan road works to ensure efficient use of resources and minimise disruption to the public.
- Route planning via integrated transport planners showing train, bus and other transport interchanges.

⁶⁸ The Society of Information Technology Management (SOCTIM) report *Planning for ICT: the technology architecture* published in 2004 identifies the “use of Geographic Information System packages based on Ordnance Survey and NPLG, linked to operational services such as planning and development control, land charges, national land information service, highways and all addressed based systems such as Council Tax, rents, benefits, electoral register, refuse collection, non-domestic rating and environmental health inspections” as beneficial both in improving customer satisfaction and in improving efficiency through greater accuracy in referencing systems.

⁶⁹ The East Sussex in Figures (ESIF) database is an example of how a local authority is able to draw together a wide range of data geographically—this can be accessed via the East Sussex County Council website.

⁷⁰ An English policy initiative: parallel initiatives exist in Scotland, Northern Ireland and Wales.

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- Sustainable development and environment protection, for example in meeting increasing housing needs and protecting the environment.
7. Geographic information plays a key role in empowering citizens to access services, helping individuals and communities help themselves. For example using addresses as spatial reference, citizens can report abandoned vehicles, fly tipping, graffiti, uneven paving stones, suspicious activities, notify changes of address etc via contact centres or websites.⁷¹
8. Local Government also generates significant geographic and locational data, for example a statutory requirement to create addresses resulting from new development through naming and numbering. Current difficulties in ensuring consistency between the major agencies involved in recording addresses (Royal Mail, Ordnance Survey and IDeA) indicate that there is still much to be done in this area.
9. It is strongly in the public interest to have a clear and cost effective approach to the availability and licensing of data, statistics and evidence where needed to deliver services for the benefit of the public.
10. IDeA holds some specific responsibilities which have led to a long engagement with Ordnance Survey in two key areas:
- IDeA has procured, on behalf of all local government users, a comprehensive set of mapping services that cover local government needs. The agreement supporting this arrangement (the Mapping Services Agreement) covers services from three suppliers including Ordnance Survey. The Ordnance Survey elements represent annual licence fees to Ordnance Survey of over £17.5 million pa (covering requirements for England, Wales and Scotland, including Police, Fire and National Parks alongside local authority usage). 574 authorities benefit from this collective procurement. This procurement in 2005 was a precursor to a similar process led by the Department for Communities and Local Government for the rest of the public sector (currently out to tender).
 - IDeA is responsible for the National Land and Property Gazetteer (NLPG)—this collates details of addresses for all properties in every local area. This dataset has been subject to engagement between IDeA and Ordnance Survey over several years: issues over licensing of this data remain intractable despite effort on several fronts over recent months.

Question 1—*In 2002 the Committee's predecessor, the Transport, Local Government and the Regions Committee, concluded in its report on Ordnance Survey: "there is a clear need to define the boundaries of Ordnance Survey public service and national interest work." To what extent has the position changed in the intervening five years?*

11. We believe that the findings described in Question 1 are as relevant today as they were in 2002, and that they need to be acted on. The proposed UK Geographic Information Strategy needs to provide a framework to help address this if the Strategy comes to fruition and is sufficiently resourced to be deliverable. Also, if effective arbitration processes had existed the problems in relation to establishing a single addressing infrastructure, which are commented on elsewhere in this document, may not have arisen.

12. There must be a clear distinction between the public good function of Ordnance Survey, and the commercial role of the Ordnance Survey as a trading fund. This distinction is unclear, and not written into the Ordnance Survey Trading Fund (1999) or Ordnance Survey Framework (2004) definitions of Ordnance Survey's role. The result is continued questioning over intellectual property rights and licensing issues, and disputes that inhibit public good purposes.

13. The former should be accessible and available on a basis that is analogous to national statistics (there is an argument that some core geographic data should be classified as national or official statistics): ie available without undue constraint or prohibitive cost to all who require them in the public interest. We therefore broadly support the findings of the Office for Fair Trading report that Public Information Holders separate their remits for "refined and unrefined" data ie that Trading Funds like Ordnance Survey should make commercial use of their own unrefined data on the same basis as that available to other commercial users of that data. The Prime Ministers Strategy Unit has endorsed some of these conclusions in a recent report.⁷²

14. There should be robust and independent governance to provide guardianship of principles such as data standards and effective use and accessibility in the public interest, and to ensure that the distinction between public and commercial interests is equitable. One model for this might be that in the Statistics and Registration Services Bill (at the time of writing before Parliament). The Bill:

- Provides for guardianship and scrutiny of national and official statistics.
 - Aims to ensure confidence in these statistics; and
 - Includes a duty on the proposed board to recognise the public good role of such statistics.
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⁷¹ The East Sussex County Council Access East Sussex common access fault reporting system initiative is an example, winning an Association of Geographic Information award.

⁷² The Power of Information—Ed Mayo and Tom Steinberg, June 2007.

15. There are locational data that, in varying ways, fall within Ordnance Survey control and licensing that should be defined as public good services, including:

- Relevant “core reference geographies” where not the responsibility of others (for example Defra in relation to certain statutory designations) as a means of presenting statistics and data (where appropriate) at consistent and therefore comparable geographic levels: for example by local government boundaries or by census output areas; and
- Addressing and property location: the ability to identify accurately people and property is necessary for effective public service delivery across the spectrum, be it the alleviation of poverty, effective planning for education, levying tax, emergency service delivery, national security etc. There should be a single, definitive system for addressing and property location as a public good without any unnecessary intellectual property, licensing, cost or other constraints on use and accessibility.

Whilst we understand why the Advisory Panel on Public Sector Information (APPSI) might conclude that addressing is outside Ordnance Survey’s “public task”⁷³ given the terms of Ordnance Survey’s remit as set out in the Trading Fund (1999) and Framework (2004) definitions, we believe that this is not in the public interest. We are therefore also very concerned by the recent Department for Communities and Local Government statement that it does wish to pursue a single National Spatial Address Infrastructure.⁷⁴

Local authorities currently provide addressing information to Royal Mail and thereby to Ordnance Survey for their Address-Point commercial product (with councils receiving no recognition or recompense). Ordnance Survey licensing constrains local government from generating income directly from this same information, for example, to help cover the costs of maintaining its address databases. Rather than sustaining this fraught situation, a single address system created and maintained as a public good on the basis proposed in this document would resolve this complex and ultimately costly dispute. It would also bring the benefits of the local authority system which also includes the identification of buildings that don’t have addresses to be identified: clearly a matter of importance to the emergency services for example.

Such an outcome would be consistent with early Geographic Information Panel work in developing a UK Geographic Information Strategy which also pointed to the value of developing a single addressing / property location infrastructure.

17. The approach outlined above would also be consistent with:

- The recent EU INSPIRE Directive that requires certain data sets to be publicly available at no (or modest) cost, establishes principles for sharing certain core data; and the need for government to adopt one reference version of any definitive core data set.
- Wider developments in the provision and sharing of data, including those from Cabinet Office with regard to Transformational Government⁷⁵ which sees geographic information as part of the public service technology architecture.

Question 2—In 2002, the Select Committee also identified “a clear need for some form of independent arbitration so that conflicts could be resolved” between OS and its partners and customers. To what extent has that position changed in the intervening five years?

18. There are also some distinct issues that surround the need for effective arbitration: for example, arbitration is not, as far as we are aware, available to licensed users of OS data (the terms of such licences are broadly unchanged since the Select Committee’s previous report). Here we believe that current developments in this direction are welcome but need considerable strengthening to build on the fact that Ordnance Survey:

- is within the scope of Public Service Information Regulations but without sufficiently robust means to resolve disputes; and
- that trading funds are the first organisations to work within the good practice guidelines of the Information Fair Trader Scheme (IFTS). Whilst Ordnance Survey was initially approved, they were subsequently criticised in a report on IFTS published in March 2006. The fit between IFTS rule, Public Service Information Regulations and competition law is not yet subject to significant case law, but early indications suggest the processes need development and further effort is needed to clarify responsibilities.

⁷³ Advisory Panel on Public Sector Information publishes review of OPSI recommendations with regard to complaint SO 42/8/4, April 2007

⁷⁴ Statement by Communities and Local Government on 1 June 2007. The aim of the National Spatial Address Infrastructure (NSAI) project was to provide a single national address database that would be maintained through a partnership approach and a collaborative framework of address and property identifiers. In June 2007 the Department announced it would not be carrying out any further work on the NSAI at this time.

⁷⁵ An English policy initiative. There are parallel initiatives in Scotland, Northern Ireland and Wales (in the latter, it is *Making the Connections*).

19. The introduction of a market regulator should be a significant improvement, however the result has been slow to bed in and we remain concerned about the extent to which Office of Public Sector Information recommendations have sufficient authority. Also, the roles of the Office of Public Sector Information, the Advisory Panel on Public Sector Information and the Office of Fair Trading are not necessarily clear to the outsider.

Question 3—*What is your assessment of the UK Geographic Panel's operation since its introduction in 2005?*

20. We welcome the hard work led by the Panel under Ordnance Survey chairing to develop the basis for a UK Geographic Information Strategy: we believe this to be the key purpose for such a Panel. However, we believe that through no fault of the Panel, this work is inhibited because ministerial sponsorship is not configured to reflect the UK remit of the Panel or the cross cutting nature of geographic information which touches many aspects of public policy and services.

21. We believe however, that the Panel should be time limited in current form and that an agreed UK geographic information strategy will need a different governance structure along the lines described both above in response to questions 1 and 2, and amplified below in response to question 4. Whilst in existence, we believe that the Panel should set a yearly plan with targets and produce an annual report outlining achievements.

Question 4—*The Select committee's predecessor, in recommending in 2002 that an advisory panel on geographic information should be created, suggested that it should have at least three members, including the Association for Geographic Information, OS and a private sector representative. Is the current panel's membership sufficiently balanced with three private sector representatives among its 12 members?*

22. This answer to this question requires clarity about the role and function of the Panel. The private sector is an innovator and provider of geographic information services. Effective engagement and dialogue between public, private and voluntary sector interests is therefore crucial and, for example, the industry needs to be engaged in any development of a UK Geographic Information strategy.

23. There is no apparent market failure or equity issue that justifies special public policy treatment for the geographic information industry per se. It is therefore appropriate to focus the functions of a Panel and a Strategy on the public policy and public good dimension of geographic information and therefore to focus engagement with the private and voluntary sector on:

- Identifying how the private sector can help effective delivery of public policy goals and how government at all levels will work with the industry.
- Where geographic information generates business benefits for the private sector that have potential application and value for the public sector. Some uses have such commonality, for example both private and public sectors are interested in demographic change and the use of geographic information for property identification; and
- The potential for geographic information policy and infra structure to support public/private/voluntary sector partnerships for public service delivery.

24. On this basis, we conclude that insofar as the panel is to continue, that the balance between public and private sector representation is broadly acceptable but that there are two areas for further consideration:

- (i) Whether at least one member of the panel ought to be selected on the basis of expertise in innovation and cutting edge development and use of geographic information. Such an individual would most likely be drawn from the private sector, but if appropriate could come from the academic, voluntary or public sector; and
- (ii) Public sector representation is heavily biased towards central government. Public service delivery bodies are effectively confined to the single local government representative. Whilst we entirely acknowledge the important use that central government has for geographic information, the bias is out of kilter with the extent to which public service delivery and therefore very substantial public expenditure is devolved, and increasingly accounted for at local level. We suggest an increase in local public service representation to reflect the high level of usage within local government and the emergency services, and, increasingly by health services and others.

25. However, if the Geographic Information Panel has a role in advising the Government on how it can best help British industry to exploit the commercial potential of geographic information, then there would be justification in increasing private sector representation on the Panel or its successor body and we would be content with such an arrangement under these circumstances.

Question 5—*In a memorandum to the Committee during its recent inquiry into DCLG's Annual Report 2006, the Government said that the ending of NIMSA means "there is no distinction for OS between public service and commercial activity". If that is the case, should the head of a commercially active organisation continue, ex officio, to be official adviser to Ministers on "all aspects of survey, mapping, and geographic information"?*

26. We are concerned at the CLG conclusion as expressed in this question. The public sector, including Ordnance Survey, are generators of substantial and important data in the public interest, which are deployed through public policy and service delivery on behalf of the tax payer, to benefit the citizen.

27. It is inconsistent to treat national or official statistics such as neighbourhood statistics or the indices of deprivation as public goods, yet, by implication, treat their use in understanding locality or community in geographic terms as indistinct from commercial activity. As indicated earlier, local authority dependence on the underpinning geographic framework is substantially growing and commercial charging for their use in public service delivery is therefore unwelcome.

28. It would not be appropriate to have the head of a fully commercial organisation as the sole Ministerial adviser on all aspects of survey, mapping and information. We believe that clarity in distinguishing what Ordnance Survey provides for the public good and what is solely a commercial enterprise, coupled with appropriate governance would go some way to address the concern that underlies the question, and would address the conflict of interest that is inherent in the way Ordnance Survey is currently structured and operates.

29. However, it is important that the adviser on geographic information issues to government is someone with a thorough grounding in the issues of geographic information on the one hand, and the policy framework within which government operates on the other. The intrusion of bias from commercial interests cannot be acceptable to those acting on the advice given.

30. Whilst we are concerned with public good outcomes not institutional structures, it is worth exploring the extent to which Ordnance Survey can be structured to create a sharper divide between public good and public good commissioning functions, and a contractor/provider function that maintains the public requirement, but has freedom to exploit the underlying data in delivering other commercial products for which it sees a market.

Question 6—*What impacts will the ending of NIMSA have on rural mapping?*

31. Local Government is a major geographic information user and customer of Ordnance Survey and therefore has a strong interest in the quality of Ordnance Survey's outputs. We do not have evidence to track the precise impact that removal of the subsidy has made on the quality of particular products. We also note that Ordnance Survey has undertaken to maintain all existing products that received NIMSA support under the local government Mapping Services Agreement. We would be concerned if there were any diminution in the quality of relevant products covering rural areas that impacted on service quality. Many rural authorities were not content with the rural revision cycle whilst NIMSA was in place. Any reduction in that cycle could potentially have detrimental effects on the ability to deliver services, and is of particular concern in relation to the emergency services.

32. Councils cover the full range of communities and localities from dense urban infrastructure to remote rural areas and we believe that equal accuracy and consistency of Ordnance Survey products is necessary across this spectrum: for example, there are risks to emergency planning and environmental health activity if quality declines in future. If the most likely impact is on the frequency of updates to rural mapping data, this could have significant implications where, for example, large housing or road development takes place in the intervening period. Local authorities may be able to counter some of the impact as they maintain land and property gazetteers that keep address data up-to-date based on their own internal intelligence based on customer services, planning, tax, electoral and other services. However, linking this information to up to date mapping data is still vital tool as a tool for monitoring such functions.

33. We believe that accurate monitoring of Ordnance Survey activity costs and impacts is therefore necessary to provide evidence to demonstrate that product quality is being sustained. We support suggestions in OFT's report on Commercial Use of Public Information and other sources, that Ordnance Survey's financial mechanisms for supporting products should be given greater clarity. Whilst local government, through the Mapping Services Agreement has negotiated a regional Key Performance Indicator on Ordnance Survey to monitor mapping revision, the current government target to monitor Ordnance Survey mapping revision is limited to a national average. It is therefore, currently, difficult to monitor the effects of the removal of NIMSA in individual rural authorities from published figures.

Question 7—*Will the procurement of necessary services be more expensive for local authorities now that OS is not providing them under NIMSA?*

34. We are not in a position to give a definitive answer. This is partly because of the procurement cycle employed in contracting with Ordnance Survey on behalf of all local authorities under the Mapping Services Agreement. The current Agreement runs until 2009.

35. We have seen no direct impact in terms of prices of current products supplied under the current Agreement as the charges for the relevant products were defined for a four year period as part of the initial negotiation. Our system imposes quality requirements on suppliers, and it is unclear whether the withdrawal of NIMSA will result in lower quality for existing data provided by Ordnance Survey, but none is apparent to date.

36. We believe that clear visibility of Ordnance Survey pricing mechanisms would allow better understanding of whether NIMSA withdrawal has an impact on pricing at the time of the next procurement of the Mapping Services Agreement.

Question 8—*Some OS competitors allege it is able to use its position as a public sector information holder to compete unfairly, either by imposing over-stringent and costly licence conditions or by developing products of its own in direct competition with theirs but without the associated licensing costs. There are further complaints that OS is an effective monopoly, preventing fair and transparent competition in the geographic information market. What is your view of these suggestions?*

37. We believe that there are a number of risks that result when the trading fund model is imposed on an organisation with a combination of public good and commercial objectives unless strong safeguards are in place. The temptation for government is to rigidly require that commercial activity funds public good objectives: there may be occasions where this works, but this is far from universal. The temptation for the organisation is likely to be to maximise competitive advantage with the risk that this results in exploiting public sector information holder status.

38. We believe that Ordnance Survey business models, and licensing controls do give a controlling position over potential commercial competition, for example, in using addressing products, including those generated by local government (though please note our primary desire to see a single, public good system as outlined in response to question 1). We believe that the Office of Fair Trading CUI Study, the Office of Public Sector Information report and APPSI recommendations all point to this conclusion. For example, APPSI in their recent assessment suggested that Ordnance Survey addresspoint product data do not fall within the public sector information, yet they are provided under crown copyright by an organisation within the public sector.

39. It is our view that Ordnance Survey business models restrict the entrance of a wider set of geographic information data providers in several areas of mapping services. The conditions to create a vibrant and competitive market in such information would be of benefit to local government as a major user of the information. Our experience in the Mapping Services Agreement indicates that competitors can, when they secure a market entry, compete on both quality and price with Ordnance Survey, and we would welcome an extension to other areas. Aspects of this issue relating to the citizen's use of geographic information are argued strongly in the recent Prime Ministers Strategy Unit report—"the Power of Information".

40. Also, where Ordnance Survey bundle data collection and management costs, data delivery costs and customer support costs into individual product license fees, it has been possible for local government to establish Best Value in the procurement of geographic information and supporting services. The Mapping Service Agreement procurement highlighted that Ordnance Survey data could be tailored, supplied and supported by third party organizations in innovative ways and for potentially better value for money, if it were not for the license and pricing model adopted by Ordnance Survey.

Memorandum by the Local Government Data Unit (Wales)

BACKGROUND

The Local Government Data Unit Wales (Data Unit) is an organisation which reflects the interests of local government in Wales and collects local government data for the Welsh Assembly Government (WAG). The Data Unit is wholly owned by the Welsh Local Government Association (WLGA) and operates under service level agreements with the WLGA and Statistical Directorate of WAG.

The Data Unit seeks to improve the availability of data for Wales to improve local government and public services for the people in Wales. To this end, part of the remit is the use of geographical information products to improve the "legibility" of activities by linking people to place.

Although Ordnance Survey is established as a trading agency under the Communities and Local Government Committee, the activities of the DCLG are virtually all devolved to the WAG. It thus appears as an anachronism that a Department with no authority in Wales is the major provider of geographic information, providing the WAG with limited input to the Department that regulates one of its major suppliers.

RESPONSE TO THE INQUIRY

Question 1—*In 2002 the Committee's predecessor, the Transport, Local Government and the Regions Committee concluded in its report on Ordnance Survey "there is a clear need to define the boundaries of Ordnance Survey public service and national interest work". To what extent has the position changed in the intervening five years?*

The set up of OS as a trading agency muddies the waters as regard the public interest in the survey and its development of geographic products, and the use of those products in the public interest. The question to be asked is what element of the work of OS is solely in the public interest (not being commercial in nature and analogous to "national statistics"), what is commercial material used in the public interest and finally, what is commercial?

The need to ask those questions implies that there does need to be some definition of the boundaries of the public interest work of OS.

It does seem illogical that the Treasury and, DCLG and devolved administrations distribute funds to further the governance of Britain, yet these are recovered through fees charged by a government trading agent and returned to the Treasury. This only costs the public purse each time a financial transaction needs to be made. With pressure to reduce expenditure from the public purse, it seems more logical to extract a fund at source, to cover governmental use of the geographic material from OS. This reduces the administrative overhead, maintains a real cost to government payable as a fee to OS (to avoid anticompetitive accusations) and leave government free to maximise their use of geographic products in the interest of the citizens.

Question 2—*In 2002, the Select Committee also identified "a clear need for some form of independent arbitration so that conflicts could be resolved" between Ordnance Survey and its partners and customers. To what extent has that position changed in the intervening five years?*

Although OPSI is the guardian of the Crown Copyright, it is far from clear whether they have the influence or authority to arbitrate between OS customers or partners. Indeed, in a recent dispute, the authority was disputed by an appeal to APPSI.⁷⁶ During this period an OFT report⁷⁷ was critical of the way OS handled its commercial products.

In the light of these reports it seems clear that an independent arbitrator with authority is needed. That does not preclude existing players, but must have authority to enforce decisions.

Question 3—*What is your assessment of the UK Geographic Panel's operation since its introduction in 2005?*

Judgement must be reserved until the GI Strategy document is put into the public domain. The requirement is a coherent strategy, based on good evidence with a clear timed action plan where activities are allocated with responsibility for delivery. There are also problems with Ministerial responsibility to accommodate devolved issues and the cross cutting nature of geographic information. As the DCLG is the sponsoring organisation of the GI Panel and most of DCLGs activities are devolved, it seems inappropriate for the panel to be located in that department.

There will be issues of the effectiveness of a "UK" strategy document on devolved administrations with differing policy objectives, but the leadership is welcomed.

Other than the GI Strategy, little has been seen from that Panel. Local Government in Wales has so far little understanding of the work of the Panel and the possible implications to their work.

⁷⁶ http://www.epsiplus.net/epsiplus/cases/decision_of_the_office_of_public_sector_information_so_42_8_4_13_july_2006

⁷⁷ (http://www.of.gov.uk/advice_and_resources/publications/reports/consumer-protection/oft861)

Question 4—*The Select Committee's predecessor, in recommending in 2002 that an advisory panel on geographic information should be created, suggested that it should have at least three members, including the Association of Geographic Information, Ordnance Survey and a private sector representative. Is the current panel's membership sufficiently balanced with three private sector representatives among its 12 members?*

The balance of commercial interest is not as much an issue as the low representation of local government, which arguably is one of the biggest users of geographic information in the public interest. SOLACE is the only body solely representing local government interests.

If there is an issue with the commercial sector, it is that it is all with Ordnance Survey. It is important they are represented, but perhaps other commercial interest could be added to improve the interest in innovation in a wider environment. This could dilute some central government representation, but if that representation is provided as cross-cutting, rather than a vested interest this should not be an issue for departments and could improve effectiveness.

Question 5—*In a memorandum to the Committee during its recent inquiry into DCLG's Annual Report 2006, the Government said that the ending of NIMSA means "there is no distinction for Ordnance Survey between public service and commercial activity". If that is the case, should the head of a commercially active organisation continue, ex-officio, to be official advisor to Ministers on "all aspects of survey, mapping and geographic information?"*

There is an obvious issue of conflict of interest with the head of a commercial organisation advising a Minister. However, this particular situation is well known and in the public domain, which perhaps reduces the risk in this case. The head of Ordnance Survey has obvious expertise to give to government and perhaps, having commercial insight, is more likely to take a further reaching view to promote innovation.

Question 6—*What impact will the ending of NIMSA have on rural mapping?*

This is a particular issue for Wales which has the highest proportion, of any home nation, of its population in areas designated "rural". The issue is, to what standard will OS maintain the geographic products in sparse rural areas? The impact of any new development has a disproportionate effect on areas with little intrinsic development, so the currency of products is important. This is more important as Wales does not have a land use data base and the OS MasterMap product has obvious potential.

Local authorities are obliged by law to develop road names and numbers⁷⁸, but need to relate any up-to-date address system to physical locations on the ground, for which mapping is essential.

There are so many cross cutting implications for administrative boundary geography, rural baseline mapping and address information in rural areas. This was shown during the foot-and-mouth outbreak during the 2001 census period and will be so should an epidemic situation occur again.

Question 7—*Will the procurement of necessary services be more expensive for local authorities now that Ordnance Survey is not providing them under NIMSA?*

This will not be known until 2009 for local government, when the current MSA concludes. The difficulties of agreeing a commercial deal is illustrated by the PGA not being concluded to the project timetable.

Question 8—*Some Ordnance Survey competitors allege it is able to use its position as a public sector information holder to compete unfairly, either by imposing over-stringent and costly license conditions or by developing products of its own in direct competition with theirs but without the associated licensing costs. There are further complaints that Ordnance Survey is an effective monopoly, preventing fair and transparent competition in the geographic information market. What is your view of these suggestions?*

OS started their trading position with an historic portfolio developed from the public purse, but have developed new products by investing from their trading fund built from that historic portfolio.

There have been accusations of anti-competitive behaviour by OS, but this must be judged on the outcomes to the investigations following the complaints. However, that assumes an effective controlling regimen is in place (see question 2).

From a local government point of view, it seems inequitable that material provided free becomes a chargeable product when presented back to local government as embedded data in OS and Royal Mail data sets.

OS has invested in MasterMap and it could be argued that the level of investment has been so high that it has shut other possible producers out of the market. The effect of this will be evident during the next round of negotiations for mapping products. The issue that is of considerable concern to those using OS products is the intellectual property rights (IPR) demanded by OS over products derived using material from OS, but

⁷⁸ section 64 of the Towns Improvement Clauses Act 1847 and section 21 of the Public Health Acts Amendment Act 1907.

not embedding that material in the product. Thus any data set produced by local authorities for its citizens should be destroyed if that local authority moved from OS the products that were used during its creation. This is clearly unreasonable for the citizens and British local government as a whole. At present OS does not offer any legacy license agreements to reflect the value gained from their products in the past, but not dependent on current products.

CONCLUSION

Ordnance Survey is an organisation with good products. There are issues with control of that organisation with regard to the public interest and competition. There are issues with the aggressive commercial stance taken by an organisation originating from publicly funded material.

In Wales there are particular issues of rurality and language that need special consideration and are not always understood.

Memorandum by the Department for Communities and Local Government (DCLG)

ORDNANCE SURVEY: PUBLIC SERVICE INFORMATION

INTRODUCTION

I.1 This paper sets out the Department for Communities and Local Government's response to follow-up questions from the Communities and Local Government Committee on the Ordnance Survey.

I.2 Ordnance Survey is the national mapping agency for Great Britain. It is a Government Department in its own right with Executive Agency status. It gained Trading Fund status in 1999. Its Ministers are the Department's Ministers. The Secretary of State for Communities delegates responsibility for Ordnance Survey to its 'shareholder' Minister, Angela Smith. Baroness Andrews is responsible for the Department's customer relationship with Ordnance Survey. A protocol is in place to ensure separation at both Ministerial and official level in the Department to avoid any conflicts of interest or perceptions of conflicts arising in respect of the Department's relationships with Ordnance Survey.

I.3 The Department's 'shareholder' interest in Ordnance Survey is supported by the Shareholder Executive. The Executive is an expert unit based at the Department of Trade and Industry but reporting to the Cabinet Secretary, with a mission to improve fundamentally the government's performance as a shareholder and to provide a source of corporate finance expertise within government.

Q1 In 2002, the Committee's predecessor, the Transport, Local Government and the Regions Committee, concluded its report on Ordnance Survey: "there is a clear need to define the boundaries of Ordnance Survey public service and national interest work". To what extent has the position changed in the intervening five years?

- (a) In evidence to the Select Committee's recent enquiry into DCLG's Annual Report, the Department said the ending of NIMSA meant there was "no distinction between public service and commercial activity for Ordnance Survey" (Third report of 2006–07, HC 106; Ev. 105). But OS remains the largest public sector information holder in the UK, providing publicly gathered data under licence to organisations both public and private. How clear are the boundaries between its roles as the holder of base geographical information required by its partners and competitors to make their products commercially viable and as a commercial operator within the same marketplace as those partners and competitors?*

1.1 Ordnance Survey's public task is set out in Section 1 of the Framework Document published in 2004, which makes it clear that Ordnance Survey is charged with collecting, maintaining and disseminating geographical information. It is important to note that all of Ordnance Survey's operations contribute to commercial revenue generation in some way.

1.2 In the light of recent events such as the publication of the Office of Fair Trading's (OFT) study on the commercial use of public information (CUPI) and the ending of NIMSA payments to Ordnance Survey, it was agreed that the definition of the public task should be revised to further clarify its boundaries. This work is ongoing, and we will send the Committee the public task document once it has been finalised and approved by Ministers.

Q2 In 2002, the Select Committee also identified “a clear need for some form of independent arbitration so that conflicts could be resolved” between OS and its customers. To what extent has that position changed in the intervening five years?

2.1 Since 2002, Ordnance Survey was accredited under the Information Fair Trader Scheme (IFTS) operated by the Office of Public Sector Information (OPSI). This ensures that Ordnance Survey operates in an open, transparent and fair way in respect of its trading activities. Anyone dissatisfied with the way Ordnance Survey responds to requests for access to information and data may complain to OPSI. In recent years, OPSI has investigated two complaints against Ordnance Survey and reported accordingly. OPSI found in favour of Ordnance Survey in one case and against on part of the complaint in a second. In the second case, a request by both sides for a review to the Advisory Panel for Public Information (APPSI) found that the case was not covered by the PSI regulations.

GEOGRAPHIC PANEL

Q3 What is your assessment of the UK Geographic Panel’s operation since its introduction in 2005?

3.1 The Panel has provided a useful focus for the strategic development of Geographic Information in the United Kingdom. It has a high calibre senior representation from producers and users of geographic information across the public and private sectors. The Panel communicates openly with interest groups and regularly publishes information on its website.

3.2 The Panel’s main task has been to drive the development of a Location Strategy for the United Kingdom. Good progress has been made and key stakeholders were involved through a series of events. The Panel is now considering the way forward to maximise synergies with the European INSPIRE directive, which aims to improve access to geographical information. The Panel intends to make recommendations to the Minister, Angela Smith, during 2007.

Q4 The Select Committee’s predecessor, in recommending in 2002 that an advisory panel on geographic information should be created, suggested that it should have at least three members, including the Association for Geographical Information, OS and a private sector representative. Is the current panel’s membership sufficiently balanced with three private sector representatives among its 12 members?

4.1 The Department considers that the Panel’s membership is sufficiently balanced. The composition was considered carefully in the light of the Select Committee’s recommendations—the larger membership reflects the need to adequately reflect the diverse nature of the British geographic information industry. The Panel reviews its representation to ensure that it has experience of the current key issues.

4.2 Panel members represent a broad view of the geographic information industry. The Department considers that four of the thirteen members have a specific remit to represent the private sector. These are Association for Geographic Information, Association of British Insurers, Royal Institution of Chartered Surveyors and the Demographic User Group. We estimate that between them they represent over 700 private sector companies.

Q5 In the memorandum to the Committee during its recent inquiry into DCLG’s Annual Report 2006, The Government said that the ending of NIMSA means “there is no distinction for OS between public service and commercial activities”. If that is the case, should the head of a commercially active organisation continue, ex officio, to be official advisor to Ministers on “all aspects of survey, mapping and geographic information”?

5.1 Ordnance Survey is the national mapping agency for Great Britain. As such, its Director-General and Chief Executive has long been official advisor to Ministers, and the Department considers this to be entirely appropriate. Advice requested and provided is focused on survey, mapping and geographic information (GI), and primarily advice on short-term issues. However, Government may at any time request advice on particular issues from other interested parties.

5.2 The response that with the ending of the National Interest Mapping Services Agreement (NIMSA) there is no distinction between public service and commercial activity for Ordnance Survey, was to make the point that Ordnance Survey’s activities are now directed towards providing data and services to public and private sector organisations and individuals under licence. The public sector makes extensive use of Ordnance Survey data.

NATIONAL INTEREST MAPPING SERVICES AGREEMENT (NIMSA)

Q6 What impact will the ending of NIMSA have on OS' own structures, financing, turnover and dividend?

6.1 NIMSA, established as a seven-year agreement in 1999 when Ordnance Survey became a Trading Fund, has contributed to the costs of an agreed list of mapping activities required in the national interest, which would not otherwise have been provided if the decision were made on a purely commercial basis.

6.2 A large proportion of NIMSA funded a single major programme—Positional Accuracy Improvement (PAI)—that resulted in an improved standard of absolute accuracy of mapping data for rural areas. This programme was successfully completed in 2006, coincident with the end of NIMSA. Much of the remainder of NIMSA supported a cyclical programme of data maintenance and capture for rural areas.

6.3 The annual value of NIMSA reduced over the period of the agreement. In 2006–07 it amounted to £0.96 million, less than 1% of Ordnance Survey's annual turnover. The impact of the ending of NIMSA has been factored into Ordnance Survey's Corporate Plan. In accordance with Treasury guidelines, and as specified in the Ordnance Survey Framework Document, the Plan is not published.

6.4 With the ending of NIMSA, Ordnance Survey has reviewed its planned activity, particularly on cyclical data revision. This review has also considered opportunities presented by advances in technology, changes in approach and methodologies, and the relative priorities of different geographies.

6.5 Ordnance Survey now believes that it will be able to continue to provide a comparable level of support to mapping rural geography as achieved under NIMSA by adopting a new approach as outlined below (see answer to Q7). It estimates that this will lead to additional annual costs for Ordnance Survey of up to £1million.

Q7 What impact will the ending of NIMSA have on rural mapping?

7.1 Ordnance Survey has reviewed its rural revision policy in the light of the altered funding arrangements, evolving customer needs, and opportunities presented by new processes and technology which have improved Ordnance Survey's capability and efficiency in maintaining its databases. A new approach is close to being finalised which it believes will maintain the currency and content of the rural geography within Ordnance Survey's products, at some additional cost but not one that is disproportionate to the benefit that will be gained by the nation.

7.2 Under the new policy all primary features, such as residential, industrial or transport infrastructure developments, will continue to be surveyed within six months of completion. A varying two to 10-year national programme of cyclic rural revision will maintain all secondary features. All areas of Great Britain will be revised in a more integrated programme. The most populated or most rapidly changing areas will be revised more frequently than previously, with the most remote areas still being revised at least once every 10 years. Revision intervals may vary according to patterns of known change and customer need.

7.3 As noted above (see answer to Q6) the major Positional Accuracy Improvement Programme was complete when NIMSA ended.

Q8 Will the procurement of necessary services be more expensive for local authorities now that OS is not providing them under NIMSA?

8.1 The cost of Ordnance Survey products was not directly affected by the existence of the NIMSA. NIMSA funding enabled investment in maintaining the consistency of currency, content and specification of the mapping to agreed levels, which would not otherwise have been provided if the decision was made on a purely commercial basis. All users benefited from these investments in the products.

8.2 Ordnance Survey assumes that, as in the case of the current Mapping Services Agreement (MSA), local government will invite bids for the provision of mapping information and services under a competitive tender. It is reasonable to assume that Ordnance Survey would be a bidder in such a tender process in the normal course of events. The current MSA does not expire until 31 March 2009. Until an Invitation to Tender is issued, with specifications for data and services, it would be premature (and potentially anti-competitive) to comment on likely pricing implications for Ordnance Survey.

 COMPETITION

Q9 Some OS competitors allege it is able to use its position as public sector information holder to compete unfairly, either by imposing over-stringent and costly licence conditions or by developing products of its own in direct competition with theirs but without the associated information licensing costs. There are further complaints that OS is an effective monopoly, preventing fair and transparent competition in the geographical information market. What is your view of these suggestions?

9.1 Collecting, maintaining and disseminating the data that goes into Ordnance Survey's databases is a costly undertaking. Ordnance Survey was granted Trading Fund status in order that the cost of doing so was placed upon users of the data rather than on taxpayers. The OFT CUI study highlighted ways in which public sector information holders generally could provide easier and earlier access to data to re-users of such data in order to benefit the UK economy. Ordnance Survey and the Department have taken the CUI study recommendations very seriously, and Ordnance Survey continues to engage with OFT to develop an acceptable solution to the concerns raised, including working to resolve some differences about the factual basis of some specific findings. It was agreed that the definition of Ordnance Survey's public task should be revised to further clarify its boundaries (see answer to Q1). Ordnance Survey is of course also subject to competition law in the same way as any other business trading within the UK.

9.2 Ordnance Survey actively encourages the use of its data by third parties"—Licensed Partners"—to produce products or services that it does not produce itself. It has created a series of "Specific Use Contracts" that set out the terms and conditions on which it would licence the use of its data for different types of end use. Amongst other benefits, this enables data to be priced according to the market perception of value for each end use. The Department and Ordnance Survey believe that these should be as straightforward as possible, and Ordnance Survey is currently considering how best to reduce their complexity.

Memorandum by the Association of Regional Observatories

The Association of Regional Observatories (ARO) represents the English Regional Observatories; observatories have extensive experience of using data and geographic information to inform public service delivery, regional policy, strategy development and performance monitoring. ARO works closely with the English Regional Development Agencies and Regional Assemblies to maximise the quality and accessibility of the evidence base available to support regional policy.

ARO welcomes the opportunity to contribute to the Communities and Local Government Select Committee's inquiry into the Ordnance Survey. The importance to regional observatories of the geographical information produced by Ordnance Survey is difficult to understate; the data is key to the role that observatories play within the public sector, in enabling delivery agencies to target areas of need, and in monitoring the progress of regions. The opportunity that exists to serve the public good through the provision of geographical information is, however, hindered by the approach that currently governs Ordnance Survey operations.

The concerns held by the Association of Regional Observatories reflect the conflict that exists between the Ordnance Survey as a provider of public service information, and the commercial principles which underlie access to data for other public sector organisations. Access to data is prohibitively expensive, particularly for small organisations who do not make use of a lot of the products marketed by Ordnance Survey. The commercial drive behind the current provision also leads to concerns that less profitable data sets will not be sufficiently maintained, undermining the quality of mapping that Ordnance Survey currently achieves.

The licensing of data is complex and restrictive, with ramifications that affect the competitive nature of the geographic information market. Licensing for regional observatories is covered at present by the Pan Government Agreement, which is currently being renegotiated. The contractual terms, particularly around "derived data", are unfavourable to the market, with the proposed contract requiring all derived data to be deleted and recreated if an agency moves to another geographical information supplier. This evidently impinges on the competitive nature of the geographic information market, as the cost implications of changing supplier (necessitating the deletion and then recreation of derived data) are significant. This lack of competition also means that the Ordnance Survey maintains a position of monopoly, removing the ability of public sector agencies to achieve best value through competitive tender.

Since the Ordnance Survey's inception as a trading fund in 1999, there have been rapid and considerable developments in geographical information systems which enable public sector delivery agencies to better target activity. These systems are dependent on reliable, cost-effective access to Ordnance Survey data; however, the current licensing system does not adequately respond to these developments, stifling both the effective use of current systems and future innovation in this area. These geographical information systems have the capability to have a significant impact on the effectiveness of public service delivery, for the benefit of the public sector and the taxpayer; the Association of Regional Observatories would therefore suggest that the Communities and Local Government Select Committee consider this issue in more detail.

The breadth of information covered by the Pan Government Agreement exceeds the data needs of many small users, and this factor, along with the restrictive nature of the licensing and the uncertainties that exist around subscription increases, means that a number of members of the Association of Regional Observatories are considering whether the Pan Government Agreement represents the most cost-effective approach to the purchase of geographical information. The data needs of observatories may well be better served through the procurement of information from Ordnance Survey on a limited, need-driven basis, which would result in withdrawal from the Pan Government Agreement negotiation process. If other signatories to the agreement were to follow suit, the continuation of negotiations would be undermined, and this may ultimately lead to the collapse of the process. The resulting situation would surely lead to parties procuring directly from Ordnance Survey, reducing the effective use of geographical information and ultimately acting to the detriment of the public good.

The Association of Regional Observatories supports the argument of the Local Government Association (amongst others), who contend that certain data produced by the Ordnance Survey (such as some 'core reference geographies') should be categorised as a public good, which should therefore be available to other public agencies without restriction. This would enable the public sector to more effectively utilise geographical information, whilst allowing Ordnance Survey the opportunity to achieve commercial gain through the provision of non-core or value-added services, for which some parts of the public sector may continue to be a market. This would also be consistent with recent European Directives, which seek to eliminate obstacles to data re-use, and to encourage greater public access to geospatial data.

At present, it seems that the operational stance of Ordnance Survey constitutes a barrier to the effective use of geographical information in the public sector. The Association of Regional Observatories welcomes the inquiry of the Communities and Local Government Select Committee into the role of Ordnance Survey, and would welcome the opportunity to contribute further if the Committee proceeds in that manner.

Memorandum by Green Amps Limited

1. Green Amps Limited ("GAL") wishes to submit this letter by way of inquiry consultation submission into the exercise being conducted by the CLG Committee constituting follow-up to the inquiry conducted in 2001–02 reported in HC481.

2. GAL is a small privately owned company engaged in the deployment of mid-size wind turbines for the generation of renewable energy. Each project comprises a pair of grid-connected 300 kW turbines deployed on farmers' land bringing together (i) renewable energy generation (ii) SME development and (iii) agricultural diversification in the form of rental income to the farmers. Each project provides enough energy for approximately 600 homes and is deployed with a minimum requirement for new grid deployment.

3. GAL currently has 14 sites in Gloucestershire for which Planning pre-clearance has been achieved, and a pipeline of 35 additional Gloucestershire sites that have been proposed by their hosts.

4. These sites, in aggregate, more than achieve, single handedly, the target for 2010 encapsulated in the Gloucestershire Renewable Energy Action Plan adopted by each of the District Councils of Gloucestershire.

5. GAL has developed a Geographic Information System (the GAL "Mapping Tool") within which different mapping layers are used to represent the interests and assets of the different key stakeholders involved in planning pre-consultation under PPS22 (statutory and non-statutory Consultees as referred to by s.54 Planning and Compulsory Purchase Act 2004). It should be noted that the backdrop for the Mapping Tool requires (in order to make sense) the 1:25,000 or 1:50,000 OS UK-wide map tile data-set.

6. One element of the Mapping Tool is the ability to (i) assess and avoid the paths of all UK (private and public sector) telecommunications microwave links and (ii) assess and mitigate the effects of interaction with civil and military primary radars. This part of the Mapping Tool requires the OS "Panorama Profile" Digital Terrain Map.

7. GAL has for some years advocated and lobbied for the streamlining of the planning system to make the task of securing planning consent for these projects easier. GAL has since 2000 also challenged Government policy on renewables deployment, arguing that unless the planning system was substantially overhauled the targets for 2010 would not have been achieved. GAL has now been vindicated in making this challenge unless substantial mitigating action is taken.

8. The Director of Renewables at the DTI observed in 2005 that GAL "was the furthest ahead in the UK as a developer in seeking to streamline the planning system in this way and that the Mapping Tool should be made available to a wider market rather than being confined to use by GAL alone". GAL has sought to achieve this by (i) in 2005 conducting a privately-funded study of how the Mapping Tool could be handed over (free-of-charge) to a public sector organisation (ii) filed a concluding report with the DTI detailing the results of that study and (iii) engaged with the Planning Portal to discuss how it could host a web-based version of the Mapping Tool.

9. The Director General of the Planning Portal and Deputy Director General Planning at the ODPM (as was) observed that “Green Amps has been monitored for some time in its endeavours and that support for its approach goes to the very top of Government”. Considerable support was pledged (and extended) by the ODPM in relation to finding ways to streamline planning assist GAL in delivering these projects.

10. Stern has now declared that lives are at risk as a consequence of Climate Change. The officers of GAL are such individuals. The deployment of renewable energy assets is not simply a matter of supporting Government policy on climate change but is also taking a mitigating stance and thus ameliorating that risk to human life.

11. GAL has found the process of properly licensing the OS mapping products referred to as grossly onerous. OS raised a challenge against GAL of the most forceful nature in April 2006 and a significant and protracted dispute between OS and GAL has ensued.

12. This matter is now the subject of judicial proceedings instigated by OS, adjoining HMSO, in the High Court.

Nick Brown
CEO

Supplementary memorandum by Ordnance Survey

Ordnance Survey has considered the Uncorrected Evidence submitted in response to the Committee. Since the Uncorrected Evidence was submitted:

- The Government Response to the Office of Fair Trading (OFT) Study on the Commercial Use of Public Information (CUPI Study) has been published (in June 2007);
- Ordnance Survey and the OFT have continued constructive engagement in respect of the CUPI Study findings as they affect Ordnance Survey. Although all outstanding issues are not yet completely resolved, significant progress has been made and Ordnance Survey is eager for final resolution on outstanding issues; and
- The definition of Ordnance Survey’s Public Task referred to in paragraph 1a.3 of its Memorandum of 1 June 2007, has now been finalised by Shareholder Executive and approved by Ministers of Communities and Local Government. A copy of this document is attached at Annexe 1.

Ordnance Survey comments below on a number of issues raised in the Uncorrected Evidence. However, it has not sought to comment on individual points that were raised by different parties as it assumes that the Committee’s intention is to review the overall position rather than to arbitrate specific disputes. However, if the Committee considers that any specific points have not been adequately dealt with by Ordnance Survey in its memoranda, Ordnance Survey would welcome the opportunity to provide further written evidence to the Committee on such points.

Q1 Ordnance Survey’s public service and national interest work

Many Government respondents to the Committee underlined the importance to them of Ordnance Survey data maintained to the currency, reliability, consistency and completeness they require.⁷⁹ These needs are reflected in the new Public Task document which now has been agreed with Ministers in order to provide additional clarity as to the boundaries of Ordnance Survey’s “public service and national interest work”.

These issues are, in our view, largely distinct from the recommendation of the OFT, following its CUPI study, that Ordnance Survey’s “monopoly activities” (unrefined information) should be separated from its “competitive or contestable activities” (refined information).⁸⁰ Although Ordnance Survey would agree that Ordnance Survey’s “unrefined information” is likely to overlap to a substantial extent with its Public Task information, it does not believe that this is necessarily true in all cases. The concept of “public task”, which is directed at securing that information is available to Government, and “unrefined data”, which is directed at separating out “monopoly” activities, are essentially directed to different issues. It is entirely possible, for example, that there could be a need for certain types of data to be produced as a “public task” matter in order to ensure that a certain specification or geographic coverage is maintained, despite the fact that similar products are available in the market for certain geographies and, as regards other customers, are regarded as competitive alternatives to the Ordnance Survey product. In this respect Ordnance Survey disagrees with the OFT view that the public service and national interest work of Ordnance Survey needs to be drawn narrowly to reflect the “monopoly element in the geographic information market”.⁸¹

⁷⁹ Department for Environment Food and Rural Affairs, Uncorrected Evidence 08; Defence Intelligence, Intelligence Collection Strategy and Plans, Ministry of Defence, Uncorrected Evidence 10; Local Government Association/Improvement and Development Agency, Uncorrected Evidence 13; Local Government Data Unit—Wales, Uncorrected Evidence 14; The Association of Regional Observatories, Uncorrected Evidence 16.

⁸⁰ Uncorrected Evidence 03, paragraph 4.1.

⁸¹ Uncorrected Evidence 03, paragraph 4.18.

Q1(a) Distinction between public service and commercial activity

Although Ordnance Survey now has a revised Public Task, it remains the case that a clear distinction cannot be drawn between Ordnance Survey's "public" and "commercial" operations. Ordnance Survey is required to fund all of its operations (both Public Task and non-Public Task) under its Trading Fund model, and consequently has to obtain a commercial return on all of its activities. The distinction between its public service and commercial activity is therefore inherently blurred.

The OFT, as part of its CUIP Study, has recommended that there be accounting separation between Ordnance Survey's unrefined and refined information activities. However, this is not the same as a distinction between "public" and "commercial" activities—the OFT recognises that Ordnance Survey needs to charge for unrefined information in order to fund unrefined information activities. Also, as stated above, some Public Task activities may fall in Ordnance Survey's refined information activities.

Nor are the OFT's recommendations directly addressed at the issue many Government respondents have identified, which is that one of the main issues of data access for them is affordability. Although OFT believes that accounting separation would lead to cheaper unrefined information, because any possibility of downstream cross-subsidisation will be removed, the level of potential savings is as yet unassessed and may not be material. In any case, Government customers, who already benefit from extremely favourable terms under the collective purchasing agreements under which they obtain that data, are unlikely to be the primary beneficiaries of any such pricing adjustment.

Ordnance Survey therefore believes that the distinction between its public service and commercial activities will remain blurred for as long as it is required to self-finance all of its operations under the Trading Fund model. Some respondents have suggested an alternative model whereby Ordnance Survey's Public Task activities obtain direct Government funding and be made more freely available (both in terms of cost and restrictions on use).⁸² That would, of course, make the distinction clear, but Ordnance Survey itself is not able to change the model under which it operates (which is dictated by statute).

In accordance with the Government's Response to The Power of Information, Ordnance Survey understands that an independent review has been commissioned, to be published by Budget 2008, of the costs and benefits of the current Trading Fund charging model for the re-use of public sector information.

A number of respondents criticised Ordnance Survey's financial performance as a Trading Fund. Ordnance Survey disagrees with the analysis of these respondents who have either misinterpreted the financial information and/or misunderstand the financial targets which Ordnance Survey is required to meet. As the issue of Ordnance Survey's financial performance is not a direct subject of inquiry for this Committee, Ordnance Survey has provided further information on this issue in Annex 2.

Q2 Independent Arbitration

Intelligent Addressing in its Uncorrected Evidence states that NLPG "cannot be licensed for use outside local government on what IA consider to be fair and reasonable terms because an element of NLPG data was originally derived from Ordnance Survey".

These issues have already been the subject of a complaint by Intelligent Addressing to OPSI under the Information Fair Trader Scheme and the Re-use of Public Sector Information Regulations. That complaint has been fully heard, both by OPSI and (in relation to a number of specific points) on appeal to APPSI. Intelligent Addressing succeeded in part of its complaint and OPSI made a number of recommendations to Ordnance Survey, including recommendations for some substantive amendments to its licensing terms, which Ordnance Survey has complied with.

Intelligent Addressing's appeal to APPSI (which was unsuccessful) was solely on the issue of the Re-use of Public Sector Information Regulations and did not affect OPSI's findings under the Information Fair Trader Scheme.

Ordnance Survey understands that Intelligent Addressing is dissatisfied with the ultimate outcome of its complaint but does not consider that dissatisfaction justifies the conclusion that OPSI's and APPSI's "processes do not offer clarity or certainty of redress because of a lack of empowerment and resources amongst the appropriate authorities". Part of Intelligent Addressing's complaint was ultimately unsuccessful on its merits. In respect of the part of the complaint that was successful, Ordnance Survey complied with OPSI's recommendations.

⁸² For example, Local Government Association/Improvement and Development Agency, Uncorrected Evidence 13; The Association of Regional Observatories, Uncorrected Evidence 16; Defence Intelligence, Intelligence Collection Strategy and Plans, Ministry of Defence, Uncorrected Evidence 10.

We note that the Intelligent Addressing complaint (or the factual substance of it) has been raised by no fewer than nine other respondents,⁸³ many of whom have a relationship with Intelligent Addressing.⁸⁴ Ordnance Survey would like to emphasise that it took this complaint very seriously and has now addressed the issues raised to the satisfaction of the adjudicating bodies.

Q3–Q5 *Geographic Panel*

Some submissions comment on the membership of the UK GI Panel. The initial members of the Panel were appointed by the then Parliamentary Under Secretary of State within the Office of the Deputy Prime Minister (Yvette Cooper MP) on the advice of ODPM officials. Four members of the GI Panel represent organisations with significant private and commercial sector interests and membership within the geographic information community.

Some submissions to the Committee have perceived a potential conflict of interest at Ministerial level as the sponsor Minister for the UK GI Panel, (and hence the Minister to whom the UK Location Strategy would be submitted), was also the sponsor Minister for Ordnance Survey. This original decision was made by CLG, but the perception has now been addressed following the changes in Ministerial responsibilities in June 2007. Baroness Andrews, Parliamentary Under Secretary of State for Communities and Local Government, and the Minister with responsibility for the procurement of Geographic Information on behalf of Government, has assumed Ministerial responsibility for the UK GI Panel.

Q6–Q8 *National Interest Mapping Services Agreement*

Ordnance Survey has nothing further to add to its previous submissions on these questions.

Q9 *Competition*

The Government Response to the CUPi Study was published on 26 June 2007 and Ordnance Survey is actively engaged in discussions with the OFT to resolve its outstanding concerns. Ordnance Survey expects that the final conclusion of these discussions, which are ongoing, will lead to some changes in Ordnance Survey's business model but as these discussions are ongoing it is difficult to comment more specifically on these.

Two issues that are not the direct focus of the OFT recommendations are those that have been raised by a number of Government respondents—data sharing and derived data.⁸⁵ While Ordnance Survey tries to do what it can to accommodate these needs of its Government customers and also recognises the need to continue to improve its licensing terms, these are two issues which present significant challenges to Ordnance Survey under its current Trading Fund model. For so long as Ordnance Survey is required to fund all of its operations from its revenues, it needs carefully to control the use of its data by licensing in order to preserve the value of the intellectual property rights in the data. It is Ordnance Survey's licensing income which accounts practically for its entire revenue. If Ordnance Survey were to allow unfettered sharing of its data (which is the ideal for Government customers) then either the prices charged for the data would need to significantly increase (to reflect the much broader use that is being licensed) or the value of its intellectual property rights to the taxpayer would quickly diminish. Clearly this is a spectrum and a balance needs to be struck. Ordnance Survey considers that the balance that it has currently achieved is a compromise which meets many of the needs of Government customers, while preserving the value of Ordnance Survey's assets.

Some of the Uncorrected Evidence makes speculative assertions which are presented as fact. In some instances unfounded allegations of unlawful or irregular behaviour on the part of Ordnance Survey are made. The Committee has asked for information relating to perceived unfair competition by Ordnance Survey. However, Ordnance Survey considers that there is a danger in coming to any conclusions based on information where issues either have not been brought before, or alternatively have already been adjudicated on by, a relevant court or regulatory body.

⁸³ Local Government Association / Improvement and Development Agency, Uncorrected Evidence 13, paragraph 10 “issues over licensing of [NLPG] data remain intractable despite effort on several fronts over recent months”; Getmapping, uncorrected evidence 07, section b); OFT, Uncorrected Evidence 03, paragraph 4.32; OPSI, Uncorrected Evidence 02, paragraph 14; Pollard, Uncorrected Evidence 11; Corbin, Uncorrected Evidence 12, paragraph 5; Association of Geographic Information, Uncorrected Evidence 06, paragraphs 2.2, 2.3, 8.2 and 8.3; The Locus Association, Uncorrected Evidence 05, “a member's recent complaint”; Government Data Unit—Wales, Uncorrected Evidence 14, Q2.

⁸⁴ Intelligent Addressing is a limited company in a “public/private partnership” with Improvement and Development Agency and is a member of The Locus Association and Association of Geographic Information.

⁸⁵ Department for Environment food and Rural Affairs, Uncorrected Evidence 08; Local Government Data Unit—Wales, Uncorrected Evidence 14; The Association of Regional Observatories, Uncorrected Evidence 16.

ORDNANCE SURVEY PUBLIC TASK

ORDNANCE SURVEY: OPERATING PRINCIPLES

Ordnance Survey is an independent non-Ministerial government department and Executive Agency. It operates as a trading fund under the terms of the Government Trading Funds Act 1973 and The Ordnance Survey Trading Fund Order 1999. It is responsible to the Secretary of State for Communities and Local Government.

Ordnance Survey creates, maintains and distributes geospatial and cartographic data and products relating to Great Britain in the nation's interest. This paper sets out Ordnance Survey's Public Task.

PUBLIC TASK

Ordnance Survey's Public Task is to:

- Collect and maintain uniform datasets with national coverage forming the official record of the natural and built environment of Great Britain, containing:
 - detailed mapping of the built and natural landscape (topography),⁸⁶
 - high resolution address data;
 - transport networks (including road, rail, waterways, tracks and paths);
 - terrain and height data;
 - administrative and electoral boundary information; and
 - geographical names (including features with imprecise extents such as “Dartmoor”, “The Cotswolds”, “Forest of Bowland”, “South Downs” etc).
- Provide a nationally consistent cartographic portrayal of the topography of Great Britain at various scales including large scales.
- Maintain a definitive three-dimensional satellite-based geodetic⁸⁷ reference framework of Great Britain that underpins the national datasets and facilitates the integration and analysis of location-based information from many sources.
- Make the content of the datasets widely available in forms that are accessible to customers of all types for wider benefit. This will be in the form of products which are the direct output of those datasets. As part of its Public Task and in order to fulfil its trading fund obligations, Ordnance Survey will charge all customers for the licensing and use of its products.
- Conduct its activities efficiently and effectively to maximise the broader economic value of its data, whilst complying with trading fund requirements.
- Ensure that its data is capable of supporting the principles underlying the Digital National Framework in underpinning the association and integration of third party geospatial information.

In order to fulfil its Public Task, Ordnance Survey is required to collect and maintain topographic data at the following scales:

- | | |
|---|----------|
| — High Change Geographies ⁸⁸ : | 1:1250 |
| — Rural Areas ⁸⁹ : | 1:2500 |
| — National cover: | 1:10000 |
| | 1:25000 |
| | 1:50000 |
| | 1:250000 |

The above datasets are required to fulfil Ordnance Survey's Public Task to ensure that a comprehensive, nationally consistent version of each exists in the public interest. Annex 1A sets out:

- Ordnance Survey's datasets which fulfil its Public Task;
-

⁸⁶ Topography: Including defining the surface shape and composition of the landscape, comprising both natural and artificial features.

⁸⁷ Geodetic: Relating to the scientific discipline that deals with the precise measurement and representation of the earth, its gravitational field, and other related phenomena. Within Ordnance Survey geodetic-quality information forms the high precision framework that ensures the correct positioning of all mapping and other data against the National Grid.

⁸⁸ Predominantly urban areas and areas of significant development.

⁸⁹ Predominantly rural settlements and developed agricultural land.

- the products that are currently the direct output of those datasets; and
- the rationale for including the various data within the Public Task.

The minimum levels of accuracy and revision required for those datasets are at Annex 1B.

The referencing systems and data collected and maintained by Ordnance Survey contribute to the development and integration of geographic and location based information collected and used by government, business and individuals.

As the National Mapping Agency of Great Britain, Ordnance Survey represents Great Britain overseas as experts on Survey, Mapping and Geographic Information. It provides a focus for the provision of public sector information into pan-European and international collaboration by National Mapping Agencies and the European Directive on the Infrastructure for Spatial Information in Europe (INSPIRE).

In discharging its Public Task, Ordnance Survey:

- Seeks to maximise both the accessibility of, and the broader economic benefit arising from the use of the data. It therefore creates products directly from these datasets and makes them available, including through commercial licensing, to government and business customers and consumers.
- Takes into account the views of customers (as well as, inter alia, technological changes and its trading fund requirements) to ensure that the range and content of these products meets their changing needs, and makes changes to content, accuracy and revision policies as may be necessary to ensure that the datasets and products remain fit for purpose. This may result in adding or withdrawing products from availability from time to time, as well as enhancing content and functionality.

FUNDING

Under The Ordnance Survey Trading Fund Order 1999, Ordnance Survey is required to fund all of its operations from its trading revenue so that the revenue is sufficient, taking one year with another, to meet outgoings and any further financial objectives required by HM Treasury. The HM Treasury requirement for the period 1 April 2007 to 31 March 2010 is, over the period taken as a whole, for a return on capital employed of at least [. . .]

Government does not provide any direct funding by way of grant payments for the delivery of Ordnance Survey's Public Task, and Ordnance Survey is required to meet its financial obligations as a trading fund from the income generated by its activities, including its Public Task activities. Ordnance Survey may also, but is not required to, engage in non-public task activities. To the extent that it does so, these activities will also contribute to Ordnance Survey's trading fund obligations.

ACCESS TO DATA

Ordnance Survey provides access to its data and products on a basis which first, enables it to deliver its Public Task and second, maximises the broader economic value of the information it holds. Data from the datasets forming the Public Task are made available to customers at the earliest stage of production consistent with the ability for Ordnance Survey to generate sufficient revenue to meet its Trading Fund requirements in delivering its Public Task. With ongoing investment in its technology infrastructure, Ordnance Survey may, in future, be able to increase the granularity for customers to obtain thematic subsets of the datasets within its public task.

PRICING

Comment: This section is subject to the outcome of ongoing discussion with OFT. At this stage it seems clear that OFT's concept of "unrefined" and "refined" data cannot be directly matched to the Public Task outlined above. If there is inconsistency then the pricing model may be inconsistent with either the OFT view or the Public Task approach outlined below. Assuming agreement in due course there will need to be a period of transition to the new arrangements as in either case internal charging arrangements, new cost allocation processes and some form of accounting separation will need to be implemented.

Those products and datasets required to deliver the Public Task will, overall, be priced to cover the costs associated with the datasets and products, including investment costs, a share of corporate costs and the agreed rate of return. At the level of individual products and datasets, differential pricing is used.

Those products which fall outside the Public Task will be priced at market rates to at least cover the costs associated with the creation and distribution of the datasets and products, including investment costs, a share of corporate costs and the agreed rate of return taken as a whole across all such datasets and products. Where the product uses Public Task data, it will access that data at the same price and on the same terms as any third party.

In all cases, appropriate pricing and discount structures will be applied to reflect the level and extent of usage.

LICENSING

This section may also be impacted by the outcome of discussions with OFT

Ordnance Survey information is subject to Crown Copyright and Crown database rights. Ordnance Survey has delegated authority from the Controller of Her Majesty's Stationery Office to manage these Crown rights in its information on a day to day basis.

Ordnance Survey will operate a licensing system, consistent with the foregoing paragraphs, which enables it to deliver its Public Task and maximises the broader economic value of its data.

In operating its licensing system Ordnance Survey is committed to the principles of the OPSI Information Fair Trader Scheme.

CHANGES TO THE DEFINITION OF PUBLIC TASK

The practicalities of implementation, amendment and review of the definition of the Ordnance Survey Public Task will be worked out separately.

Annex 1A

DATASETS AND PRODUCTS WITHIN THE PUBLIC TASK

The datasets listed here are those required to fulfil the Ordnance Survey's Public Task. The "Public Task" rationale for each dataset is given, together with the products by which Ordnance Survey currently disseminates the datasets to customers of all types. Taken together the datasets and products form an integrated portfolio providing a framework of nationally consistent, authoritative and correlated geographic information from the detailed individual property level to the strategic regional and national overview.

<i>Public Task Dataset</i>	<i>Statement of significance with respect to Public Task</i>	<i>Products currently produced from the Dataset</i>
National Geographic Database (NGD) <ul style="list-style-type: none"> — 1:1250—high change areas — 1:2500—rural geography — 1:10,000—national cover 	<p>The data critically underpins essential core public sector functions concerned with:</p> <ul style="list-style-type: none"> — Land and infrastructure development, management, exploitation and land registration; — Local and national governance and democratic process; — Sustainable communities, national security, border controls and law enforcement; — Environmental and built heritage conservation legislation, planning, and control. <p>It also provides a consistent national framework for a wide range of private sector business associated with the ownership and exploitation of Land and Property assets.</p> <p>The database is populated directly from surveys at the three 'basic scales' and contains the core topographic content and unique identifiers forming the only nationally consistent, fully maintained and authoritative large scale topographic data available for the whole of Great Britain.</p>	<p>OS MasterMap® Topography Layer; Land-Line® Land-Line.Plus® OS Sitemap®</p> <p>Note: OS MasterMap Topography layer has a richer specification, data structure and content than Land-Line, including unique feature identifiers (TOIDs), allowing the product to support greater functionality within user applications than Land-Line which represents the previous generation of product specification and structure.</p>
ROADS Database	<p>The data underpins critical public and private sector functions associated with:</p> <ul style="list-style-type: none"> — National/regional transport policy and planning and traffic management; — Routing and navigation including in-vehicle systems and street-level mapping; 	<p>OS MasterMap® Integrated Transport Network layer</p>

<i>Public Task Dataset</i>	<i>Statement of significance with respect to Public Task</i>	<i>Products currently produced from the Dataset</i>
	<ul style="list-style-type: none"> — Vehicle tracking, command and control and civil contingency/emergency services response co-ordination; — Highways infrastructure, gazetteers and street-works. <p>Populated directly from NGD and containing authoritative, geometrically precise and nationally consistent large scales communications (road, track and path) network data together with road access, height and weight restriction attributes for all of Great Britain.</p>	
ADDRESS-POINT Central Management System	<p>The data underpins core public sector functions concerned with address location in:</p> <ul style="list-style-type: none"> — Local and national governance and democratic process; — National security, border controls and law enforcement; — Land and property location and identification—gazetteers and indexes; — Environmental and built heritage conservation legislation, planning, and control. <p>In addition the data provides a consistent national framework for commercial applications for geo-referenced addresses. Authoritative and fully maintained database of precisely grid referenced addresses providing consistently attributed detailed data for the whole of Great Britain, and forming the core addressing content of NGD.</p>	<p>OS MasterMap® Address Layer OS MasterMap® Address Layer 2 ADDRESS-POINT®</p>
<p>National Height database: Contours:</p> <ul style="list-style-type: none"> — 5m interval—Urban & Rural — 10m interval—some rural and mountain & moorland. <p>Digital Terrain Model (DTM):</p> <ul style="list-style-type: none"> — ±2.5m @ 10 m grid—Urban & Rural (5m contours) — ±10.0m @ 10 m grid—some rural (10m contours) and mountain & moorland 	<p>The base level data, available in Contour or DTM formats underpins public sector activity concerned with:</p> <ul style="list-style-type: none"> — Public Infrastructure, utility services and environmental planning, analysis, development and management; — Landscape and development planning including waterways management and floodplain modelling; — Risk assessment and mitigation (eg: flood and wind exposure modelling); — Ground surface and airspace obstruction modelling for national security, defence training, aviation and radio-telecommunications applications. <p>Authoritative, nationally consistent, indexed and maintained database of surveyed contours and point heights forming the core terrain and height content of NGD.</p>	<p>Land-Form PROFILE® contours Land-Form PROFILE® DTM—(10m grid)</p>

<i>Public Task Dataset</i>	<i>Statement of significance with respect to Public Task</i>	<i>Products currently produced from the Dataset</i>
<p>Supplementary high accuracy, high resolution DTM:</p> <ul style="list-style-type: none"> — ± 0.5m @ 2 m grid—selected urban & flood plain; — ± 1.0m @ 5 m grid—rural (5m Contours) <p>± 2.5m @ 10 m grid—rural (10m Contours) and mountain & moorland</p>	<p>Supplementary high accuracy, high resolution terrain data that supports high precision applications including:</p> <ul style="list-style-type: none"> — Development and civil engineering land assessment and high resolution terrain modelling; — Utility asset planning and management—pipeline pressure and signal propagation analysis; — Environmental and Insurance risk modelling (flood, pollution and noise mapping); — Emergency services and civil contingency planning / resource deployment. <p>Landscape visualisations in combination with other datasets for development planning and control, and presentations. Detailed terrain model data generated by precise observations providing consistent height information for precise landscape analysis and modelling applications.</p>	<p>Land-Form PROFILE® Plus DTM—(2m, 5m and 10m grids).</p>
<p>1:50,000 Scale Height data Contours: 10m interval—national cover DTM: ± 3.0m @ 50 m grid</p>	<p>Lower resolution height data efficient for:</p> <ul style="list-style-type: none"> — Military aviation navigation systems; — Strategic planning; — Telecommunications network and cell modelling and analysis; — Regional and catchment-level hydrological modelling. <p>Database of contours derived from OS Landranger Mapping providing consistent national data at a resolution appropriate to regional terrain modelling and visualisation.</p>	<p>Land-Form PANORAMA® Contours Land-Form PANORAMA® DTM</p>
<p>1:25,000 Raster Database</p>	<p>The data contains all of the information necessary to underpin:</p> <ul style="list-style-type: none"> — Strategic, neighbourhood and environmental planning, development and control, and designation of specified (eg: conservation) areas; — Rural estate and forestry management and controlled zone administration (eg veterinary); — Civil contingency and emergency response (particularly Coastguard, Air-Sea and Mountain Rescue); — National security and defence, command and control:— designated NATO standard military training map; — National standard for education and the safe participation in outdoor activities. 	<p>1:25,000 Scale Colour Raster OS Explorer Map</p>

<i>Public Task Dataset</i>	<i>Statement of significance with respect to Public Task</i>	<i>Products currently produced from the Dataset</i>
	Derived from NGD and providing complete, maintained and consistent national coverage at 1:25,000 scale—essential where a large area of interest and greater visual definition of communications networks is required.	
1:50,000 Scale Database	<p>Forms the core of citizen consciousness of national geography, location and neighbourhood and is the essential base-map for:</p> <ul style="list-style-type: none"> — National security, defence and military training functions; — Wide area environmental management, conservation and development; — Asset management and Marketing analysis; — General topographic reference including for tourism. <p>The database underlying the ubiquitous OS Landranger national map for general wide area topographic location and reference.</p>	1:50,000 Scale Colour Raster OS Landranger Map
1:250,000 Scale Database	Consistent national small scales database of communications, settlements, major hydrology and significant vegetation providing selected topographic information at the regional level appropriate to general planning, routing and navigation, statistical analysis and display and indexing at the regional, national and pan-European level.	Strategi® 1:250,000 Scale Colour Raster Administrative Boundary Maps
Administrative Areas Database	<p>The data underpins core public sector activities concerned with location, indexing and strategic analysis; identification of local and parochial government responsibilities, and with management of electoral and democratic processes.</p> <p>The authoritative reference dataset of administrative area polygons and complementing other formal management area boundaries (eg: Health Service; Utility Services) and statistical analysis areas.</p>	Boundary-Line

In addition to these datasets, as the National Mapping Agency Ordnance Survey provides other services for the wider public good including:

- Scientific quality location and positioning reference information;
- Printing and map content support to assist MoD in their work;
- Survey activity to assist in the timely and accurate registration of land.

ACCURACY AND REVISION OF PUBLIC TASK DATASETS

ACCURACY

Ordnance Survey sets and monitors standards of accuracy for its datasets and products commensurate with the “nominal scale” of the data.

Accuracy of geographical data may be defined in terms of parameters relating to:

- Precision: the resolution of the geo-reference co-ordinates of individual items contained within the data;
- Geometric fidelity: the degree to which the geometry of individual features within the data represent the ground alignment and shape of the features being represented;
- Relative accuracy: the degree to which distances between adjacent or near-adjacent features contained within the data represent the equivalent ground distances, orientations and physical relationships;
- Absolute accuracy: the degree to which the geo-locations of feature(s) within the data represent their absolute position on the surface of the earth.

Accuracy standards for the datasets and products maintained as the Public Task will be subject to continuing dialogue with major customers in government and business, and consumers.

Ordnance Survey’s databases and products are produced or derived from the information collected during survey and mapping activities for the most detailed large scales datasets. Current survey accuracy standards for these data are:

TOPOGRAPHIC DATA:

	<i>Absolute accuracy Compared with the National Grid. Absolute error—Root Mean Square Error (RMSE)</i>	<i>Relative accuracy Relative error. (Over specified distance between points taken from the map)</i>
1:1250 (urban)	0.5 metres	±0.5 metres (60 metres)
1:2500 resurvey or reformed (urban and rural)	1.1 metres	± 1.0 metres (100 metres)
1:2500 overhaul (urban and rural)	2.7 metres	1.9 metres (200 metres)
1:10 000 (mountain and moor-land)	4.1 metres	± 4.0 metres (500 metres)

TERRAIN AND HEIGHT DATA:

	<i>Digital Terrain Model</i>		<i>Contours</i>	
	<i>DTM Grid Interval</i>	<i>Absolute accuracy Absolute error— Root Mean Square Error (RMSE)</i>	<i>Contour Interval</i>	<i>Absolute accuracy Absolute error— Root Mean Square Error (RMSE)</i>
<i>High Resolution Data</i>				
Urban & selected floodplain areas	2.0 metres	± 0.5 metres	Only supplied as DTM	—
Rural areas	5.0 metres	± 1.0 metres	Only supplied as DTM	—
Mountain and moor-land areas	10.0 metres	± 2.5 metres	Only supplied as DTM	—
<i>Standard Resolution Data</i>				
Urban areas	10.0 metres	± 2.5 metres	5.0 metres	± 1.0 metres
Rural areas	10.0 metres	± 2.5 metres	5.0 metres	± 1.0 metres
Rural areas	10.0 metres	± 5.0 metres	10.0 metres	± 1.8 metres
Mountain and moor-land areas	10.0 metres	± 5.0 metres	10.0 metres	1.8 metres

REVISION

Ordnance Survey uses a combination of Continuous and Cyclic Revision programmes to maintain the currency of the Public Task datasets, according to the nature of the change and its importance to users.

Continuous Revision:

- High profile developments for which user demand will require all of the relevant information to be captured by the date of completion/opening;
- Significant housing and industrial developments, new communications (roads, railways etc.) and other significant major changes to the landscape, including demolitions and changes to addressing and naming information, which merit inclusion within the database within 6 months of identification of the change.

Cyclic Revision:

Systematic sweeps, including the use of remote sensing techniques, through the mapping of rural and mountain & moorland areas at intervals of between 2 and 10 years according to the nature of the landscape and the frequency of change, for:

- Other changes, particularly in rural and moor-land areas to buildings, land enclosures, vegetation and other less significant geography.

Revision policies for the datasets and products maintained as the Public Task will be subject to continuing dialogue with major users in the government, business and consumer arena.

Annex 2

ORDNANCE SURVEY'S FINANCIAL PERFORMANCE

FINANCIAL PERFORMANCE OF THE TRADING FUND

B1 Several submissions have discussed Ordnance Survey's financial performance as a Trading Fund.⁹⁰ The Ordnance Survey Framework Document 2004 makes it clear that Ordnance Survey is required only to generate sufficient revenue to cover operating costs, investments and repayments and a return on capital employed, year on year in a sustainable manner. The Framework Document makes it clear that, rather than focus on generating profit:

“Financial management of Ordnance Survey is underpinned by three principles:

- The Trading Fund model is one of breaking even taking one year with another after allowing for operating costs, investment needs, loan repayments and agreed levels of dividend.
- In the event that Ordnance Survey is more profitable than forecast after investing in national interest and customer driven improvements, surpluses in excess of those needed to sustain future development can be avoided by lowering prices.
- Revenue shortfalls will be compensated, where possible, by an appropriate combination of increased productivity, efficiency savings, reduced costs, lower dividends and curtailing loss-making non-core activities.”

B2 Any consideration of Ordnance Survey's financial performance with regard to NIMSA⁹¹ should take into account that NIMSA was a cost-recovery contract not a grant. NIMSA funding covered only those agreed activities actually undertaken.

Any analysis which disregards revenue from NIMSA⁹² must also disregard equivalent costs, since the costs incurred on NIMSA-related activities would not have been incurred in the same period without the NIMSA funding. As the outputs of NIMSA-funded activities have benefited all users, it is more correct for financial analyses of Ordnance Survey's performance to include both costs and revenue related to NIMSA.

B3 Government support for workforce restructuring⁹³ (a total of £18m over the financial years 1999–2000 to 2001–2002) assisted Ordnance Survey to transfer organisationally into the Trading Fund environment. Ordnance Survey would otherwise not have invested in this restructuring with the consequential implications for long term operating costs and business efficiency.

B4 The AA settlement⁹⁴ related to unpaid royalties (including royalty liabilities incurred after the start of the Trading Fund) and to costs of investigation and pursuance of the infringements that Ordnance Survey would not have incurred had AA been properly licensed for those uses of the Crown copyright material.

⁹⁰ Intelligent Addressing Limited, Uncorrected Evidence—04, paragraph Summary—Q6, paragraph Q1.3, paragraph Q6.5; Locus Association, Uncorrected Evidence—05; Background—6th paragraph, Locus Response to Q1—2nd paragraph; Chris Corbin, Uncorrected Evidence—12; Paragraphs 4 and 5.

⁹¹ Uncorrected Evidence 04, paragraph Q1.3; Uncorrected Evidence—05; Background—6th paragraph.

⁹² Uncorrected Evidence 04, paragraph Q1.3; Uncorrected Evidence—05; Locus Response to Q1—6th paragraph.

⁹³ Uncorrected Evidence 04, paragraph Q1.3

⁹⁴ Uncorrected Evidence 04, paragraph Q1.3

Disregarding the value of the AA settlement as an exceptional item is only appropriate if other exceptional items are also disregarded, such as a significant sum to cover the ongoing costs of Voluntary Early Retirement resulting from a staff restructuring that reduced the size of the workforce by 20% during 2002–03.

B5 Discussions on Ordnance Survey's financial performance as a Trading Fund since its inception on 1 April 1999, and particularly in relation to suggestions that Ordnance Survey's prices have remained broadly unchanged⁹⁵ during the life of the Trading Fund, must be set in the context of:

- Introduction, with effect from 1 November 1999, of the Business Geographics product group covering a portfolio of 13 medium and small scales digital products, many with significantly reduced prices;
- Significant reductions in the standard list price of Land-Line (5%), 1:10,000 Scale Raster data (10%), OSCAR Asset-Manager (12.5%), and Digital Use Licence charges (5%) with effect from 1 September 2000;

and significant other cost expenditure during the life of the Trading Fund related to:

- Technical restructuring of the large scales database from the OS 93 specification to the OS 96 specification and to the introduction of the OS MasterMap topographic layer;
- Data management, customer ordering and data delivery technology to support OS MasterMap products;
- A significant proportion of the Positional Accuracy improvement and rural revision programme (ie: the 60% of the programme not funded by NIMSA);
- Major new business systems to support long term efficiencies in business operations;
- Provision of over 3 million free maps for 11-year-olds up to 31 March 2006 as part of Ordnance Survey's continuing support for education.

In addition through efficiency savings Ordnance Survey has absorbed over 20% cumulative cost inflation during the life of the Trading Fund.

B6 In assessing Ordnance Survey's financial performance, comparisons made in some submissions of costs of activities and Ordnance Survey staff numbers,⁹⁶ it is necessary to recognise that Ordnance Survey has contracted commercial companies to undertake activities such as rural revision.

B7 Ordnance Survey believes that meaningful analysis of its performance as a Trading Fund should be based upon those trading items on which Ordnance Survey is targeted as a Trading Fund to make a return on capital employed, and which therefore form the basis of the Ordnance Survey's business model.

B8 There may be confusion among some who have contributed evidence to the Committee, regarding the payment of dividends to Government by Ordnance Survey.⁹⁷

During the first five years of the Trading Fund (from 1 April 1999–31 March 2004), Ordnance Survey was required to demonstrate an ROCE of at least 9.5% averaged over the five-year period. In the period 1 April 2004–31 March 2007 the target was 5.5% ROCE, again averaged over the three years.

In the five-year period up to 31 March 2004, Ordnance Survey was permitted to re-invest the ROCE back into the business during a period of major investment. Since 1 April 2004, Ordnance Survey has been required to pay over annual dividends to Government in line with the ROCE target, albeit with payments phased across the three years to accommodate anticipated working capital availability.

⁹⁵ Uncorrected Evidence 04, paragraph Q1.3, paragraph Q6.1

⁹⁶ Uncorrected Evidence—04, paragraph Q6.5.

⁹⁷ Uncorrected Evidence—04, paragraph Q6.2; Uncorrected Evidence—05, Background 6th paragraph; Defence Intelligence, Intelligence Collection Strategy and Plans, Ministry of Defence—Uncorrected Evidence—10, paragraph 10 Q6.