The AGI Foresight Study - The UK Geospatial Industry in 2015

An Expert Paper

Government PSI policy and Competition Issues

How change may affect the geospatial industry

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Scope

The paper considers government policy on Public Sector Information (PSI) and how this might impact on Ordnance Survey, potentially other PSI providers of geospatial data and PSI re-users. Because of the dominance of government information providers, policy and strategy is inevitably interwoven with competition law implications.

It is the author's opinion that radical but necessary changes in the UK have been too long delayed and are now inevitable. External pressures are likely to build to a point that these changes take place within three years. Their impact on the geospatial sector would probably be immediate and potentially dramatic, at least within 5 years.

Current Position

For many years PSI was considered of little strategic economic value. As the potential of a knowledge economy became better understood by government, so the importance and value of PSI gained credence. Now, PSI is frequently described as part of the national infrastructure, and compared to telecoms or the railways. Its socio-economic value in the UK runs into many billions of pounds with technological advances (Internet, SatNav, LBS etc) offering almost endless entrepreneurial opportunities. PSI's availability for re-use has a direct impact upon wider innovation and enterprise in business.

Government policy has largely trailed well behind the size of the opportunity and has followed two opposing approaches in parallel: the first is to give some PSI away for free and the second is to charge for some of it. This policy has been described as trying to be half pregnant; an impossibility! There is a great deal to criticise:

- Defensible policies are those which are clear and not contradictory. There is no simple rule as to which type of PSI is chargeable and which is not. Statutes, Regulations, statistics and maps are all highly valuable but, of the three, only maps are exploited. The boundaries of "Public Task" are often unclear and they are particularly unclear for OS because, at least in part, they are so difficult to draw rationally;

- Policies require robust justification. The justification proposed for charging for maps is that revenue earned underwrites the quality of PSI and that it is a more equitable approach ("the user pays"). Does this mean our national statistics – which are available free - are consequently of poor quality? Everyone directly or indirectly is a user of maps and statistics.

Comparisons by OS themselves with arrangements for funding other mapping agencies have not considered the macro issues but only the micro issues and are therefore difficult to defend (ie the key question is not how best to fund OS but how best to ensure the UK can ensure it has mapping that is fit for purpose). We are a small, crowded and highly developed island. Comparisons of our map market and production with that of the USA are particularly unhelpful!

There is a considerable body of evidence, much of it drawn from reports funded by the UK government, that the arrangements for OS are unjustifiable, even taking account of the changes proposed by the Operational Efficiency Programme.

Policies need to produce benign results. Exploiting PSI produces the opposite effect:

I. Substitution: Economically wasteful attempts to duplicate high-quality public data – often created with taxpayers' money – in order to circumvent draconian PSI licensing terms introduced where PSI is being exploited;

II. Gold-plating: PSI producers over-develop their products. Increased costs by a public sector body can be met by increasing prices on monopoly products. This clearly risks interfering with normal market mechanisms in a very unsatisfactory way, especially when coupled with a strong brand name and lack of regulation ;

III. The lack of boundaries: Because Public Task activities are frequently ill-defined the uncertainty is a significant disincentive for new market entrants;

IV. Reduction in economic activity: PSI Holders exploiting their data cause effects similar to those of a largely unregulated public utility. There is less choice, innovation, and enterprise and, in general, consumer costs can be expected to be higher;

V. Regulation: Over the past 10 years it has become clear that the current governance arrangements for PSI Holders are inadequate and that regulation needs to be radically strengthened if PSI exploitation by the State is to be allowed to continue. Stronger regulation and governance can only come at significantly greater cost. It is questionable as to whether revenue from PSI can justify this increased cost;

VI. Operational overheads: PSI cross-licensing within the public sector (e.g., map data) can become extraordinarily complex and an essentially nugatory activity. Some 30% of OS's overall expenditure is said to relate to licensing, marketing and sales costs (although not just within the public sector); and

VII. Exploitation requires some form of rationing of use. Even ignoring questions as to whether access to PSI should, in any circumstances, be rationed, the resultant licensing arrangements have proved quite unsuited to the Internet age.

According to the Shareholder Executive, the body which led the Trading Fund Review and whose remit is "to improve the government's performance as a shareholder in businesses", the Government is committed to stimulating innovation and competition. However the rider offered by the Shareholder Executive is that this is only to the extent where it judges "it would be beneficial to consumers in the geographic information market".

However innovation does not work to government dictat. Innovation is stimulated in liberalised markets where level competitive playing-fields exist. This is not on offer in the geospatial market in the UK, largely as a result of OS's key position and approach. Encouraging innovation is not simply a matter of tweaking licensing terms. Minor changes of policy or terms will bear only very modest fruit.

However, perhaps as a consequence of the policy confusion, in the case of OS there is a further over-riding issue which is often ignored. Any PSI producer must have a business model that enables it to operate efficiently and maximise benefits to the taxpayer – directly or indirectly. Whilst PSI producer managements might declare themselves satisfied with the status quo they are unlikely to want contention and legal challenge at every turn.

Currently OS is expected to have one foot in the "public good" public sector and another in the "commercial" private sector. Operationally it belongs to neither. This creates great difficulties for OS management and consequently its market.

OS is dominant. It needs a sound and straightforward business model that enables it to grow its operations commercially – if it wishes to do so - without the threat of competition law proceedings for abuse of dominance. This is not the case currently. Unless OS has a structure which is truly competitive (in a regulatory and market sense) it will never be able to build value which the government might realise in future without risk of adverse regulatory intervention. Nor will the market be able to develop to its full potential.

If OS is one day to be privatised (as would seem a growing possibility), then some division of upstream/ raw/ public task activities and downstream commercial activities is inevitable. It is quite extraordinary that this split, which is potentially benign for the organisation and the UK, has been so determinedly resisted by its management since 2006.

Anticipated Changes

Given this plethora of apparently irrefutable problems with the current situation, several Ministers – and several senior Opposition MPs - already accept that PSI policy contradictions must be resolved. OS's commercial approach has been identified as being of particular concern.

It thus appears inconceivable, even taking account of the recent Trading Fund Review, that the status quo will endure substantially beyond this Parliament.

What will change? In the case of OS, the most obvious and almost inevitable change is that there will be a formal separation of OS upstream production activities from downstream commercial activities. The upstream production activities might be quite limited, for example perhaps to the basic information required by Land Registry to identify land ownership. This would become "Public Task". Its production might be contracted-out to third parties (including OS's commercial arm).

Upstream data might be available without charge but probably more likely - at least until the financial crisis has passed - would be simply licensed at cost plus a reasonable mergin to OS's commercial arm as well as third parties on the same terms. Both OS's commercial arm and third parties would then be able to add further attributes and value based upon a level playing-field.

Whilst the upstream element would remain in the ownership of the Crown OS's downstream commercial element might well be privatised.

There would need to be other changes, for example relating to managing the potential conflicts of interest which currently exist, but there would be many ways of dealing with these and they are probably not fundamental to the market development.

Impact of Changes upon the geospatial industry and upon customers

Liberalising markets has traditionally and almost without exception, encouraged innovation and enterprise amongst business and choice and lower costs for customers. All these things can be predicted. When the telecoms industry was liberalised the benign impact was almost immediate. There is no reason why the same might not be true here. When Tom Watson MP launched a competition to suggest the most innovative ways of using PSI some 400 entries were offered within weeks; the majority were GI-based.

The splitting of OS operations will be more painful than they would have been seven years ago when first mooted. OS's commercial arm will find it difficult to make the cultural shift required and some existing OS products may be dropped or increase in price to the point of substitution. However, the strength of the brand is such that OS will survive and ultimately thrive.

The quality of OS data may diminish if customers (including government) do not want to pay for it. However no true economic detriment will occur as the implication is that they may currently be paying for something which is economically unjustifiable anyway.

Customers, including value-added resellers and value added users, will benefit from far less draconian licensing terms. Other PSI holders that originate geospatial datasets would be obliged to consider the terms upon which these are made available but the harness of OS's current "derived data" policy is likely to become an irrelevance. This means that other PSI geospatial datasets which use OS mapping will become far easier to access too, opening up further opportunities for innovation and enterprise.

Scenarios

Only two scenarios are worth considering. The first is where the status quo – taking account of the changes currently proposed by the Shareholder Executive – continues. This will, of itself, create little further momentum in the geospatial sector.

The second is where the changes described above are implemented. This could open-up and transform the geospatial industry within 5 years offering a plethora of opportunity to information providers, software suppliers, re-sellers, and customers.

Summary of 5 key points

1. Current government policy as regards the exploitation of PSI is flawed and contradictory and untenable in more than the very short-term;

2. OS operates a business model which is prone to contention and acts as a barrier to their own growth as well as that of the wider geospatial market;

3. These two factors make a substantial change of OS's business model inevitable (well beyond the outline proposals of the Operational Efficiency Review), probably within two years, and a more level playing-field will result within five years;

4. A more level geospatial playing-field will cause a blossoming of the GI industry, greater innovation and enterprise, together with greater choice for end-users, potentially with lower prices;

5. These changes will initially be painful for OS but will at last offer the possibility of real growth of a genuinely commercial model, free of accusations of unfair or unreasonable monopoly practices.