



Office of
PUBLIC SECTOR INFORMATION

**OFFICE OF PUBLIC SECTOR INFORMATION
REPORT ON ITS INVESTIGATION
OF A COMPLAINT (SO 42/8/4):**

INTELLIGENT ADDRESSING AND ORDNANCE SURVEY

JULY 2006

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INVESTIGATION OF COMPLAINT SO 42/8/4

Background Information

1. The Office of Public Sector Information (**OPSI**) received a complaint from Intelligent Addressing (**the Complainant**) dated 7 April 2006. This complaint was submitted under the Re-use of Public Sector Information Regulations (PSI Regulations) and the Information Fair Trader Scheme (IFTS), of which the Public Sector Information Holder (**the PSIH**) is a member. **OPSI** has investigated the complaint under both the PSI Regulations and IFTS, and makes recommendations as appropriate.

Office of Public Sector Information

2. The Director of **OPSI** in her role as Queen's Printer and Controller of HMSO, has been appointed by Her Majesty the Queen to manage all copyrights owned by the Crown on Her Majesty's behalf. To recognise the requirement for more flexible pricing and licensing systems, trading funds were offered a delegation of authority from the Controller of HMSO. This enables trading funds to license re-use of Crown copyright information on her behalf within the responsibilities of the delegation. Those trading funds with a delegation are regulated under the IFTS. If, in the Controller's assessment, **the PSIH** is not acting within the obligations set under her delegation of authority it is open to the Controller, following discussion with **the PSIH**, to revoke in full or in part that delegation and bring the relevant licensing activity back under the Crown's direct control until such time as the internal processes dealt with in the IFTS verification report are rectified to **OPSI's** satisfaction.

The OPSI role in Investigating Complaints

3. **OPSI** is responsible for investigating complaints under both the PSI Regulations, (for failure to comply with the Regulations) and the IFTS (for failure to meet the IFTS commitment). The procedure for investigating complaints under the PSI Regulations can be found on the **OPSI** website at www.opsi.gov.uk/advice/psi-regulations/advice-and-guidance/psi-complaints-procedure.doc
4. Complaints brought under IFTS are investigated using the same methodology as under the PSI Regulations. **OPSI** also investigates complaints that IFTS members have not met those elements of their commitment which fall outside the Regulations.
5. It is not necessary for **the Complainant** to have a contractual relationship with a **PSIH** or be directly affected by the actions of **the PSIH** in order to bring a complaint.

6. **OPSI** has structured the main part of the report to set out, under the headings of the original complaint, the view of **the Complainant**; the response of the Public Sector Information Holder (**PSIH**); and **OPSI's** assessment and recommendations.

Summary of PSI Regulations and the Principles of IFTS

Summary of PSI Regulations

7. The main aim of the PSI Regulations is to maximise the re-use of public sector information and to stimulate the economy. Within the spirit of the PSI Regulations, a **PSIH** is expected to encourage re-use of its information. Although the PSI Regulations impose no obligation on a **PSIH** to allow re-use of its information, the purpose of the Regulations is to establish a framework that provides for the effective re-use of public sector information. If re-use is allowed, a **PSIH** should:
 - Publish a list of the main documents available for re-use;
 - Respond promptly to requests for re-use;
 - Put in place copyright and licensing arrangements;
 - Ensure that any conditions on re-use do not unnecessarily restrict re-use or competition;
 - Ensure there is no discrimination between applicants. If a public sector body wishes to re-use a document for activities which fall outside its public task, the same conditions shall apply to that re-use as would apply to re-use by any other applicant for comparable purposes;
 - Discourage exclusive arrangements; and
 - Set up appropriate internal complaints procedures. There is also the option of asking **OPSI** to investigate **the PSIH's** actions and this should be made clear in the internal procedures.

Summary of IFTS Principles

8. IFTS was introduced in 2002 following the Cross-Cutting Review of the Knowledge Economy. The aim is to regulate bodies with a Delegation of Authority to license the re-use of Crown copyright material on the Controller of HMSO's behalf.

Openness

9. In principle, all information created by the organisation will be licensed for any use, by any customer. While there might have to be exceptions to this, whether limiting the material licensed, prohibiting uses or limiting the customer base, the organisation will be reluctant to allow exceptions and will explain why they are necessary.

Transparency

10. The process of applying for a licence, pricing, the considerations influencing pricing policy, and any exceptions to the principle of openness, should be explained clearly and simply in accessible public statements. Licensees and applicants for licences should be given reasons for decisions and the reasons should be consistent with public statements, the PSI Regulations and Information Fair Trader principles.

Fairness

11. All applicants and licensees should be treated alike for the same types of re-use, including re-use within **the PSIH's** own organisation. **The PSIH** should not use its position to compete unfairly.

Compliance

12. Chief Executives agree to test their organisations by an independent verification to find out whether they have the infrastructure to deliver their commitments to openness, transparency and fairness. The verification tests whether the administrative processes are actually followed in practice.

Challenge

13. The organisation has a complaints process empowered to reconsider licensing decisions. **OPSI** can investigate the organisation's licensing decisions if they appear to be in breach of IFTS principles.

The Parties

The Complainant

14. **The Complainant** is a private limited company registered in England and Wales which is involved in information management services. It is in a public/private joint-venture partnership with Local Government Information House (LGIH). The primary aim of the partnership is to put in place innovative information management processes which improve the quality, consistency and currency of address referencing and the identification of land and property throughout England and Wales. **The Complainant** has relied in part on the provision of Ordnance Survey data to do this.

The Public Sector Information Holder

15. Ordnance Survey (**the PSIH**), is a government agency responsible for the official, definitive surveying and topographic mapping of Great Britain. As the importance of geographic information increases, it is also responsible for maintaining consistent national coverage of other nationally important datasets. It was established as an Executive Agency in May 1990 and

has operated as a Trading Fund from April 1999. **The PSIH** manages Crown copyright material under a delegation of authority from the Controller of HMSO, and is therefore regulated under the IFTS.

Context of the Dispute

16. Both the **Complainant** and **the PSIH** acknowledge that the dispute is set against a long and complex history of **the PSIH's** contribution to and co-operation with local and central government on the issue of addressing information. The issues have been many and various, including, for example, the overall approach to the development of an addressing database; the roles and responsibilities of the various parties; the most appropriate source of the information; the role of **the PSIH**; the contribution made to the process from sources other than **the PSIH**; and the terms and conditions for licensing **the PSIH** data to be used. The discussions were protracted.
17. It is not the purpose or remit of **OPSI** to examine the above process. We recognise the current position, and will be examining the complaint insofar as it raises issues relating to the application of PSI Regulations and/or IFTS.
18. **OPSI** recognises that while the complaint on the face of it engages both the PSI Regulations and the IFTS, due to its diffuse nature there are certain aspects of the complaint which fall outside one or other or both of these regimes. It is proposed to set out below the different aspects of the complaint, as identified by **the Complainant**, and in the course of consideration of each to identify whether or not the issues raised fall within **OPSI's** remit.

Does the complaint concern the PSI Regulations and IFTS?

19. The complaint concerns various issues arising from the licensing of **the PSIH's** product AddressPoint¹ to **the Complainant** and **the PSIH's** own subsequent use of its product. As the complaint concerns re-use by a public sector body accredited under IFTS it engages both the PSI Regulations and the IFTS.

Re-Use

20. **OPSI** has considered **the PSIH's** argument that the PSI Regulations are not engaged since there is no re-use taking place as the commercial dissemination of AddressPoint was the "initial purpose" for which it was produced (Regulation 4(1)).

¹ AddressPoint is a dataset that defines and locates residential, business and public postal addresses in Great Britain. It is created by matching information from Ordnance Survey digital map databases with addresses recorded in the Royal Mail Postal Address File (PAF).

21. **OPSI** does not agree with this analysis of the term “initial purpose”. While **the PSIH** produces documents for its own use, which includes commercial dissemination of such documents, **OPSI** considers that the subsequent commercial exploitation by a customer of that document constitutes re-use. The customer’s own commercial exploitation of the document is not the initial purpose *within the PSIH’s public task* for which the product was produced. Rather such initial purpose is limited to **the PSIH’s** own commercial dissemination. The natural meaning of the term “re-use” is that it is a second or further use by a party, even if the purpose of that second or further use is similar to the initial purpose for which the document was used by **the PSIH**, that second or further use is still re-use.

Do any of the Exclusions in the PSI Regulations apply?

22. **The PSIH** raised certain points which argue that the PSI Regulations do not apply in this case. Government re-use policy, on which **OPSI** has the lead, is set out below.

Regulation 5(1)(a) - Public Task

23. Regulation 5(1)(a) provides that the PSI Regulations do not apply where:
- “the activity of supplying a document is one which falls outside the public task of the public sector body”.*
24. 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.
25. 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.
26. It is noted that neither **the PSIH** nor **the Complainant** have suggested that the commercial provision of a geo-spatial database information by **the PSIH** is outside its public task.

Regulation 5(1)(b) Third party intellectual property rights

27. Regulation 5(1)(b) provides that the PSI Regulations do not apply where:

“a third party owns relevant intellectual property rights in the document”
OPSI recognises that Royal Mail owns intellectual property rights in the Postcode Address File (“PAF”) and that AddressPoint is essentially a dataset which attaches georeference points to the PAF addresses. There can be no meaningful licence without the Royal Mail intellectual property. However, as the AddressPoint licence already contains a licence for use of PAF, there is no question of the third party’s intellectual rights being infringed. This exclusion therefore does not apply.

Summary of issues raised in complaint and recommendations

“Matters of Principle”

28. **The Complainant** claims that **the PSIH** has failed to reach the IFTS benchmarks and has infringed the PSI Regulations in a number of ways. **The Complainant** alleges that after carrying out due diligence on the National Land and Property Gazetteer (NLPG) creation and production, the **PSIH** announced the development of its own product, the MasterMap Address Layer 2 (MMAL2). **The Complainant** alleges that this was set up in direct competition with the NLPG. **The Complainant** believes that an IFTS accredited organisation should not set up in direct competition with one of its value-added resellers (VAR) and if it does, **the Complainant** believes that the benchmark for measuring their achievement of IFTS standards should be substantially raised.
29. **The PSIH**, however, strongly rejects any suggestion that MMAL2 is designed or intended broadly to mirror the NLPG. **The PSIH** states that it has produced addressing products since the 1990s and the MMAL2 was developed based on extensive user feedback. **The PSIH** considers that the classification data and quality management in MMAL2 is superior to that of the NLPG. **The PSIH** views MMAL2 as the logical evolution of its commitment to providing comprehensive national addressing products for nearly 15 years.
30. **The PSIH** maintains that it does not seek to compete with its partners. To do this, it ensures that partners add value to data produced by **the PSIH**. **The PSIH** has an overall objective to license its data in a non-discriminatory way, and once a specific use contract has been made available to **the Complainant**, it must be made available to all customers interested in this use and so **the PSIH** must ensure that the licence is consistent with its licensing model. **The PSIH** denies that it set up in competition with **the Complainant** after the VAR agreement was reached.

OPSI's Assessment:

PSI Regulations

31. Under this broad complaint, **the Complainant** does not specifically refer to any breaches of the PSI Regulations. The PSI Regulations do not preclude the **PSIH** from producing documents in competition with its own value added resellers. What they do require is that any conditions on the re-use of the document by the VAR do not unnecessarily restrict competition (Regulation 12(2) (b)) and that a public sector body's own re-use of its documents for a purpose outside its public task is on the same conditions as would apply to re-use by any other applicant for comparable purposes (Regulation 13(2)). These two requirements are considered further below in relation to those aspects of the complaint that directly give rise to them

IFTS

32. As mentioned in paragraph 17 above, **OPSI** is not in a position to comment on the history of the dispute and the specific issues about fairness and openness raised by this aspect of the complaint will be considered in the paragraphs below.
33. In relation to **the Complainant's** allegation that the benchmark for IFTS should be raised where a **PSIH** is in direct competition, **OPSI** does not believe that it should alter the standards it requires under the IFTS scheme. As indicated above, the question of whether the existing standards are being met in this case is considered below.

“Lack of Transparency and Unfairness in Licensing”

34. **The Complainant** alleges that there is a lack of transparency and unfairness in **the PSIH's** licensing terms. The negotiations with **the PSIH** were lengthy and **the Complainant** alleges that **the PSIH** introduced new levels of licensing complexity at various stages of the negotiations showing a lack of transparency that **the Complainant** considered was tantamount to a refusal to supply. **The Complainant** asserts that the VAR licence is long, complex and restrictive and prescribes the user-base for VAR products. It also compares unfavourably with the simplicity and transparency of other similar licences, e.g. Click-Use Licence. **The Complainant** alleges that the onerous clauses in the licence include some which make it virtually impossible to exploit the NLPG commercially such as level of charges and duration of licence term.
35. In addition, **the Complainant** alleges that the lack of transparency extends to the website in that it is not clear how the Framework Agreement interacts with the specific use contracts. Furthermore, **the Complainant** states that there are few published details about the partner licensing options.

36. **The PSIH** maintains that it does not prescribe the user-base for VAR products. The specific use contracts are defined by reference to the ultimate end use of the products. It includes end-user requirements to the extent necessary to protect intellectual property rights to comply with its delegation of authority from the Controller of HMSO. **The PSIH** acknowledges that its Framework Partner Licence and its accompanying specific use contracts are long and, in places, complex. **The PSIH** asserts that licences for intellectual property rights are inevitably complex to some degree, although it does try to minimise complexity. **The PSIH** is currently reviewing its licences with a view to simplifying them but does not think that the Government Click-Use Licence can be adapted for this purpose. The specific use contracts are designed carefully, to ensure that they do not conflict with direct licences and between other specific use contracts. **The PSIH** maintains that the Framework Partner Licence and specific use contracts are necessary to protect its intellectual property, preserve its licensing policy, fulfil its status as a trading fund and to comply with competition law requirements.
37. **The PSIH** states that the website contains significant openly accessible information, but does not publish the licensing options as the majority of partners have actively managed accounts, and **the PSIH** works closely with them to discuss their tailored licensing solutions.

OPSI's Assessment:

PSI Regulations

38. With regard to the length of the negotiations **OPSI** notes that the PSI Regulations state that “a public sector body shall respond to a request for re-use promptly and in any event before the end of the twentieth working day” (Regulation 8 (1) – (3)). Although the PSI Regulations were not in force when the first request for re-use was made, the ongoing dialogue constitutes a request as the applicant clearly still wishes to re-use the document. **OPSI** considers that the protracted negotiations do not meet the requirements set out in Regulation 8 (3).
39. The PSI Regulations also state that “Where conditions are imposed they shall not unnecessarily restrict (a) the way in which a document can be re-used or (b) competition” (Regulation (12) (1)). It appears to **OPSI** that the terms of the licence unnecessarily restrict the way in which AddressPoint can be re-used and unnecessarily restrict competition since such terms are unnecessarily prescriptive. Some conditions imposed by **the PSIH** restrict the way in which AddressPoint can be used and this restricts competition between the **Complainant** and **the PSIH** since it immediately puts **the Complainant's** products which use AddressPoint at a disadvantage to those of **the PSIH**. One such condition relates to time, as **the PSIH** can grant licences with a longer term to end-users than others such as **the Complainant**, who is limited to twelve month end-user licences as licensees want more security in the length of time they are able to use the information. This means that **the Complainant** is at an

unfair disadvantage. Another example is cost as **the Complainant** has to pay a higher licence fee for the use of AddressPoint. **OPSI** does not consider that such restrictions are necessary.

40. With regard to the website, **OPSI** would expect “any applicable charges for re-use, any standard charges for re-use, a list of main documents available for re-use and details of the means of redress available to an applicant relating to any decision or practice affecting him under these (PSI) Regulations” to be made available to the public, preferably by electronic means (Regulation 16 (1)). **The PSIH** satisfies the requirements of the PSI Regulations in this regard in that it:

- Lists any applicable charges for re-use,
- Provides details of any standard charges for re-use,
- Publishes a list of main documents available for re-use and
- Details of the means of redress available to an applicant relating to any decision or practice affecting him under the PSI Regulations

IFTS

41. Under the transparency principle of IFTS, licensing terms should be clear and easy to understand. **The PSIH's** current licences are legalistic and complex, although **OPSI** recognises that **the PSIH** is currently carrying out a review of its licence terms and conditions with a view to simplifying them and improving transparency, which **OPSI** welcomes.

42. The transparency principle also requires that applying for a licence should be as simple as possible. The time taken to negotiate a licence in this case, leads to **OPSI** finding that the application process is not transparent, even allowing for the complexity of the case.

43. **OPSI** finds that by producing a restrictive AddressPoint licence, with unfavourable terms and conditions (examples of which can be found under paragraph 39), **the PSIH** is in breach of the fairness principle of IFTS. **OPSI recommends that the PSIH keep OPSI abreast of progress so that OPSI can ensure that the terms of this licence, as well as the procedures for applying for a licence, are fair and transparent.**

“Restricting Competition”

44. **The Complainant** believes that the AddressPoint database was originally largely collected with public funds in the mid 90s and has continued to be supported by further direct public funding. **The Complainant** asserts that it is illogical and economically unviable for a third party to collect the same data without public subsidy. **The PSIH** can therefore act as gate-keeper to the market-place, by not licensing information which is essential to the development of new products, and by restricting competition for its own products.

45. **The Complainant** raises the issue of “derived data”. Although the element of AddressPoint data in the NLPG is diminishing, a full AddressPoint Value Added Reseller (VAR) licence is required if the NLPG is to be resold. **The Complainant** does not see that **the PSIH** is willing to recognise the limited application of its original data, or the value of the data contributed from other sources. **The Complainant** also states that **the PSIH** has required it to take out a joint OSCAR²/Integrated Transport Network (ITN)³ licence to cover OSCAR material that was originally used in the compilation of the database, but is not maintained. The **PSIH** has insisted on a licence for ITN, a successor product to OSCAR, which is now superseded.
46. **The Complainant** explained that in 2002 **the PSIH** agreed not to charge a second royalty for derived data within the NLPG if an AddressPoint royalty had been paid. In 2005, following the announcement of MMAL2, **the PSIH** reversed its earlier agreement and intends that every NLPG licensee must pay a full AddressPoint royalty as part of the NLPG licence, even where they have already paid for a separate AddressPoint licence. **The Complainant** further believes that there is an upper limit of charging within the PSI Regulations, and that **the PSIH** is breaching this limit in relation to the charging for the AddressPoint data.
47. **The PSIH** states that it became a trading fund in 1999, and is now required to self-fund. Although NIMSA⁴ funding has contributed to the collection and maintenance of geographic information relating to rural and moorland areas, it has not contributed to any product creation and therefore **the PSIH** does not agree that the AddressPoint database was largely collected by public funds. **The PSIH** states that since AddressPoint contains Royal Mail postcode data it needs to ensure that there is no risk to Royal Mail if it allows **the Complainant** to use their data, but it would consider permitting **the Complainant** to exploit a non-georeferenced NLPG at a reduced royalty. **The PSIH** disputes the assertion of **the Complainant** that its data has only a limited application within the NLPG.
48. **The PSIH** explains that although it intended to make a concession for the royalty on the NLPG, this was in the context of the Acacia programme⁵ and no licence was agreed. To continue with the concession would have been inconsistent with the general licensing policy under which all partners pay direct royalties for the exploitation of value-added products. **The PSIH** does not believe there is any upper limit for charging prescribed by the PSI Regulations; they instead allow for a reasonable return on investment.

² Predecessor to the Integrated Transport Network

³ ITN represents all navigable roads across Great Britain

⁴ National Interest Mapping Services Agreement

⁵ This programme considered how to join up data sources to form one, accurate, up to date and readily accessible national infrastructure of addresses, along with related mapping and property information

OPSI's Assessment:

PSI Regulations

49. The issue of charging under the PSI Regulations (regulation 15(1) and (2)) is addressed under paragraph 60 below.

IFTS

50. **OPSI** accepts that under its present policy, **the PSIH** would not be treating all licensees in the same way if it made a concession to the royalty for the NLPG and would therefore be acting unfairly. **OPSI** considers though that if, by charging a second royalty, **the PSIH** is effectively engaged in double charging this would amount to acting unfairly.
51. **OPSI** considers that **the PSIH's** current policy on derived data or derived data licence does not encourage re-use. **OPSI** believes that the example of **the PSIH** insisting on OSCAR/ITN licences to cover its material in perpetuity demonstrates unfairness and contravenes the fairness principle and more generally, the spirit of IFTS. **OPSI** considers that **the PSIH** should consider the possibility of introducing a concept of diminishing data importance whereby if the value of **PSIH** data clearly and measurably reduces over time, it might be reasonable for there to be a reduced charge. This would ensure that the insistence on two payments for an AddressPoint licence also is not in breach of the fairness principle. **OPSI recommends that the PSIH reconsider its policies on diminishing content/derived data in relation to the NLPG.**

“Discriminatory licensing arrangements and lack of transparency to restrict competition”

52. **The Complainant** believes that **the PSIH** considers the NLPG to be a potential competitor to AddressPoint, Master Map Address Layer (MMAL) and Master Map Address LayerL2 (MMAL2) and that it is discriminating in favour of its own products. **The Complainant** believes that there are many ways in which **the PSIH** has done this, such as:
- not making the terms upon which it provides its AddressPoint data under the Mapping Services Agreement transparent;
 - not ensuring that the MMAL and MMAL2 should carry the full burden of the AddressPoint licence terms and related charging tariff;
 - that the price per user is not based on the published AddressPoint pricing tariff;
 - that the terms upon which **the PSIH** bid for their products under the Pan Government Agreement are not transparent to other VAR bidders;
 - that **the PSIH** can offer 12 month contracts or longer to license AddressPoint, MMAL, and MMAL2 whereas the NLPG cannot; and

- that **the PSIH** has restricted the market into which the NLPG can be sold through the AddressPoint VAR.
53. **The PSIH** states that it has drafted a specific use contract for the NLPG. Once it is finalised **the PSIH** will offer the same terms to any person wishing to create an address gazetteer using the same data. More generally it asserts that it is not bound to use the same terms and conditions for its own products and services as it offers to VARs because these products and services are part of its public task. **The PSIH** explains that it is a standard feature of its specific use contracts that where end-user licensing is envisaged, the end-user licences are restricted to a period of 12 months. As **the PSIH** is required to act in a non-discriminatory manner, it cannot make an exception for **the Complainant**. **The PSIH** does not believe that there is any unfair competitive advantage, as it does not regard itself as competing with its partners therefore it can make its own decisions about which markets it wishes to serve directly and the terms on which it may do so.

OPSI's Assessment

PSI Regulations

54. Regulation 13 (2) states that “if a public sector body which holds a document wishes to re-use the document for activities which fall outside the scope of its public task, the same conditions shall apply to that re-use as would apply to re-use by any other applicant for comparable purposes”.
55. As stated in paragraph 23 above, **the PSIH's** public task for the purpose of the PSI Regulations is taken as those operations set out in the Ordnance Survey Trading Fund Order 1999. The use to which **the PSIH** puts AddressPoint in the production of such products as MMAL and MMAL2 consists of making available a product to meet the needs of customers and as such falls within its public task. Accordingly, while the terms on which it subsequently uses AddressPoint may differ from the terms on which third parties may use it this does not involve any breach of Regulation 13(2).
56. However, **OPSI** finds that **the PSIH** is offering licence terms which unnecessarily restrict competition (Regulation 12 (2) (b)), as **the PSIH** is able to offer more favourable end-user licence terms than **the Complainant**. This is addressed in paragraph 39.

IFTS

57. **OPSI** expects that **the PSIH** will offer the same terms to any person or organisation wishing to create an address gazetteer in order to meet the fairness principle of IFTS, which states that an organisation should not use its market power to compete unfairly. Under IFTS, **OPSI** expects the terms that are offered by **the PSIH** when supplying its products to end-

users and the terms that it offers to licensees who propose to re-use the product to be such that **the PSIH** does not unfairly restrict competition between itself and such licensees by putting the licensee's products at an immediate disadvantage. **OPSI recommends that the PSIH should review its position in this regard to ensure that it meets the obligations under the fairness principle.**

“Unreasonable and Restrictive Charging Strategy”

58. **The Complainant** believes that the charging strategy adopted for AddressPoint is unreasonable and restricts re-use. **The Complainant** believes that it does not reflect the charging basis required by the PSI Regulations, in that it gives **the PSIH** an excessive rather than reasonable rate of return on capital employed, in addition to recovering costs. **The Complainant** believes that there is evidence from the marketplace that the cost of AddressPoint overprices the perceived value of the content.
59. **The PSIH** explains that the creation and maintenance of its data products entails significant fixed costs which must be met. **The PSIH** states that overall it meets the financial target imposed upon it as a trading fund but rarely exceeds it significantly. **The PSIH** does not think that it is appropriate to analyse returns per product as there are proportionately few direct costs that are attributable to each of its products. **The PSIH** does not consider that any meaningful conclusion can be drawn about the perceived value of the content of AddressPoint.

OPSI's Assessment:

PSI Regulations

60. PSI Regulation 15 (1) allows a **PSIH** to charge for re-use of its information. There is no limit on charging; the PSI Regulations state there should be a “reasonable return on investment” (Regulation 15 (2) (b)). In relation to its overall return **OPSI** understands that **the PSIH** has an internal analysis of the direct costs and returns for each product, identifying the contribution that is made to common costs but **OPSI** is concerned that this is not identified at individual product level. It is **OPSI's** assessment that in order to demonstrate compliance with the PSI Regulations **the PSIH** should ensure and be able to demonstrate that the price charged for any product or service is in accordance with the Regulations. This should include a reasonable rate of return for the investment in that product. It is not clear that **the PSIH** is meeting the PSI Regulations in respect of charging for AddressPoint.

IFTS

61. The principles of IFTS require Fairness and Transparency in prices charged. **OPSI** interprets this as meaning:

- Licensees and potential licensees should be able to understand the basis of prices charged;
 - The prices charged should be the same for similar uses; and
 - Prices charged for internal use by **the PSIH** should be the same as to an external user.
62. In **OPSI's** assessment the basis of pricing charged for AddressPoint is not transparent and one example of this lack of transparency is that the **Complainant** does not understand the basis of pricing charged for AddressPoint and is not satisfied by the explanations given by **the PSIH**. **OPSI** shares this concern and stresses that there needs to be clear pricing principles to ensure that the IFTS transparency principle is met.
63. The **PSIH** has stated as a principle that it would charge another user the same as to **the Complainant** for a similar use, if requested. **OPSI** is satisfied that this would be the case. With regard to prices for internal use, **the PSIH** has stated as a principle that it does not have to charge the same for internal use, as this is included in its public task. **OPSI would encourage the PSIH to review its charges to ensure that where partners compete with the PSIH's 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 the PSIH's own operations.**

“Indeterminable Complaints Procedure”

64. **The Complainant** believes that the complaints procedure on **the PSIH's** website is difficult to find. **The Complainant** also states that there is no clear distinction between a general complaint and an IFTS/PSI complaint and there is no detail about the process, escalation process or appeal process.
65. **The PSIH** states that it has improved its website in this regard. The steps relating to a complaint under the PSI Regulations and IFTS are now sufficiently distinguished from other complaints procedures.

OPSI's Assessment:

66. **OPSI** notes that **the PSIH** has improved the transparency of the complaints section of its website, thereby meeting the requirements of the PSI Regulations and IFTS.

“The PSIH Business Model does not appear to promote Openness and Fairness or Transparency”

67. **The Complainant** finds **the PSIH's** business model and framework documents threatening and repressive to a fledgling information industry and asserts that they are unlikely to encourage re-use of PSI. **The Complainant** alleges that the strategy is overtly commercially aggressive and counter to the commitment to IFTS. **The Complainant** states that it

does not believe that a new licensing exception whereby **the PSIH** provides that “We may refuse to grant certain applications if you want to market a product whose intended use is the same as, or comparable to, that of any product marketed by [**the PSIH**] itself or any product which [**the PSIH**] intends to market” is in line with IFTS or the PSI Regulations. **The Complainant** alleges to have experienced difficulties licensing the **PSIH’s** products and that this should be seen in the context of an aggressive commercial strategy. It is also alleged that the difficulties encountered have prevented the wider benefits of PSI being made available and wasted public funds.

OPSI’s Assessment

68. It is not within **OPSI’s** remit to comment on **the PSIH’s** business model and framework document.

PSI Regulations

69. While the aim of the PSI Regulations is to encourage re-use of public sector information, there is no obligation under the PSI Regulations for any **PSIH** to permit re-use (regulation 7(1)). Accordingly, the exception does not involve a breach of the PSI Regulations.

IFTS

70. It is **OPSI’s** assessment that the principles have been breached in the following ways by this licensing exception:

- Openness - although exceptions may be allowed, the assumption is that a Chief Executive should be reluctant to allow exceptions and should explain why they are necessary. The exception as currently stated is at odds with this commitment as the exception is very broad, especially as it captures not only those products **the PSIH** already markets but also any products that **the PSIH** intends to market.
- Transparency - it is unclear how an applicant would be able to discover exactly what products **the PSIH** intends to market in the future.
- Fairness - this exception, would in practice, make it impossible for anyone else to produce products in competition with those of **the PSIH**. This amounts to **the PSIH** using its position as the official mapping and geospatial data producer to compete unfairly.

71. Under the IFTS verification process, there is an onus on **the PSIH** to discuss the need for exceptions to the general principle of openness with **OPSI**. This is a continuing obligation and so **the PSIH** is under a duty to discuss this exception with **OPSI** and gain its approval to the exception in order to continue to be accredited to the IFTS and to operate its delegation of authority.

72. **The PSIH should reword this licensing exception to ensure it meets the principles of openness, transparency and fairness.**

Conclusion

73. **OPSI** has made several findings throughout this report under both the PSI Regulations and the IFTS principles, and also some recommendations as to action on more general issues under the IFTS principles. Where **OPSI** has found that the PSI Regulations have not been complied with, a solution will be discussed with **the PSIH** and **Complainant**, and **OPSI** will work with **the PSIH** to determine the right approach in addressing these issues. In relation to its recommendations under IFTS, which are linked to the delegation of authority, we would urge **the PSIH** to accept those recommendations immediately. **OPSI** will stay in regular contact with **the PSIH** and monitor compliance with its recommendation. If, after a period of six months, **the PSIH** is not complying with the recommendation, action for non-compliance will be considered.
74. **The PSIH** and **the Complainant** have the right to apply to the Review Board for review of any of **OPSI's** recommendations in this report.