Exception to marginal cost pricing procedure
2010 to 2012

A Review of the first 3 years of operation

Executive Summary

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A Review of the TNA Administered Exception to marginal cost pricing procedure

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A Review of the TNA Administered Exception to marginal cost pricing procedure

Contents

Executive Summary .............................................................................................................................................. 4
Introduction .......................................................................................................................................................... 4
Key attributes of the Exception Procedure ..................................................................................................... 4
Key Findings ......................................................................................................................................................... 5
Summary of Proposals ...................................................................................................................................... 5
Expected Outcomes of the Recommendations ............................................................................................... 5
Impact Assessment ............................................................................................................................................ 6
Forward Look .................................................................................................................................................... 6
Conclusion .............................................................................................................................................................. 7

List of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPSI</td>
<td>Advisory Panel on Public Sector Information</td>
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<td>EU</td>
<td>European Union</td>
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<td>HMSO</td>
<td>Her Majesty’s Stationery Office, part of TNA</td>
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<td>IFTS</td>
<td>Information Fair Trader Scheme</td>
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<td>OPSI</td>
<td>Office of Public Sector Information, part of TNA</td>
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<td>PSB</td>
<td>Public Sector Body</td>
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<td>PSBs</td>
<td>Public Sector Bodies</td>
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<tr>
<td>PSI</td>
<td>Public Sector Information</td>
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<td>TNA</td>
<td>The National Archives</td>
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Executive Summary

Introduction

It is UK Government policy to maximise the social and economic value from the re-use of public sector information (PSI) held by public sector bodies (PSBs). Limiting charges to marginal cost pricing can encourage the re-use of PSI by removing a potential barrier.

Both the UK and the EU recognise that charges levied for the re-use of PSI are a significant impediment that can stand in the way of maximising the benefits from re-using PSI.

In 2009 UK policy was adapted to maximise the re-use of PSI by:

(a) Making PSI available at no charge or at marginal cost; or
(b) In exceptional circumstances to charge at cost plus an appropriate rate of return.

In January 2010 it became mandatory that all PSBs that hold Crown Copyright materials that wish to deviate from the marginal case model have to justify such departures against pre-defined independently set criteria which is verified by the Office of Public Sector Information (OPSI), part of The National Archives.

Key attributes of the Exception Procedure

In consultation with stakeholders, OPSI introduced criteria and a process for deciding whether PSBs could charge above marginal cost. The key attributes are that:

- The criteria are set independently of the PSB that wishes to apply a charge above marginal cost;
- The rules for setting a charge are set by a separate Financial body;
- Both the criteria and the financial rules are published in the public domain;
- The PSBs business case is independently assessed against the criteria;
- If the business case is accepted the PSB is granted an exception and the independent body publishes a public announcement that an exception has been granted;
- If the PSB is granted an exception then they must join the Information Fair Trader Scheme (IFTS) that requires the PSB to abide by the IFTS principles;
- The PSB that joins the IFTS is independently assessed, accredited and re-accredited at regular intervals to ensure compliance. The reports from the accreditation and re-accreditation processes are published in the public domain.

In the above OPSI sets the criteria, administers and operates the exception procedure and IFTS. HM Treasury sets the financial rules.

The process is designed to:

- Provide assurance to the re-user of PSI;
- Underpin the re-users’ right of challenge;
- Demonstrate that the PSB is complying with PSI Policy and trading fairly.
A Review of the TNA Administered Exception to marginal cost pricing procedure

Key Findings

The process was found to be objective, transparent, verifiable and open.

There is visibility of the process, criteria and decisions that provides a high level of transparency. The separation of criteria and financial charges from the PSBs wishing to charge above marginal cost provides an objective, impartial and verifiable basis. If a PSB is allowed to charge above marginal cost, its information trading activities are independently regulated and open to challenge.

Summary of Proposals

<table>
<thead>
<tr>
<th>Proposal Number</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Introduce a questionnaire that applicants must complete prior to making a request for an exception.</td>
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<tr>
<td>2</td>
<td>Update published documentation to make it explicit as to the responsibilities of the applicant.</td>
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<tr>
<td>3</td>
<td>Generic applications should not be accepted.</td>
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<tr>
<td>4</td>
<td>Application from applicants in the midst of Machinery of Government changes should not be accepted.</td>
</tr>
<tr>
<td>5</td>
<td>Applications that involve exclusive arrangements should not be accepted unless justified.</td>
</tr>
<tr>
<td>6</td>
<td>Applications that involve copyright infringements should not be accepted.</td>
</tr>
<tr>
<td>7</td>
<td>Publish a small set of case studies to assist potential applicants.</td>
</tr>
<tr>
<td>8</td>
<td>TNA to improve the internal back end processes of the procedure.</td>
</tr>
<tr>
<td>9</td>
<td>Applications from a PSB that are not compliant with the basic transparency requirements of the PSI Regulations 2005 should not be accepted.</td>
</tr>
<tr>
<td>10</td>
<td>Applications that involve the creation of core data sets from a set of disparate data sets should not be accepted.</td>
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<tr>
<td>11</td>
<td>TNA to consider, consult and report as to how transparency is delivered in practice. Following this consideration to adjust the exception procedure requirements where necessary.</td>
</tr>
<tr>
<td>12</td>
<td>TNA to review the categories of Crown copyright delegation to ensure the Crown copyright delegation process has not compromised the exception procedure.</td>
</tr>
<tr>
<td>13</td>
<td>TNA to consider the establishment of a base line to identify all public sector bodies that are currently charging above marginal cost have been identified. In normalising the situation to ensure applications for an exception come within the PSI Regulations.</td>
</tr>
<tr>
<td>14</td>
<td>TNA together with HM Treasury take action where necessary to ensure all the pertinent documents are aligned and current with respect to PSI Policy.</td>
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Expected Outcomes of the Recommendations

A number of proposals for TNA’s consideration to improve the current exception procedure have been put forward. The expected benefits to be gained from implementing these proposals would be to:
A Review of the TNA Administered Exception to marginal cost pricing procedure

- Reduce the number of applications entering the system;
- Improve the effectiveness of the procedure;
- Improve the requirement for transparency;
- Prepare for 2015 when the procedure becomes mandatory on all PSBs.

Impact Assessment

[Diagram]

Where: No impact = 0, High impact = 5. For example - a small number PSB’s have entered the procedure – 12 over 3 years out of a potential 300 PSBs - as such is assigned as HIGH impact.

Forward Look

The amendment of the EU Directive on the re-use of PSI as of April 2013 is now in the final stages of entering the EU statute book. As a result the amended Directive will come into force in the EU late June early July 2013 for implementation by EU Member States in the summer of 2015.

The agreed text shows that the amended PSI Directive will require PSI to be made available for re-use either for no charge or charges limited to marginal costs. Exceptions will be permitted to marginal cost pricing but these must be pre-established and published. The exception criteria will be objective, transparent and verifiable. Member States are to report on the impact of the exceptions every 3 years.

The requirements of the amended Directive are closely aligned with the existing UK PSI policy. The mandatory exception procedure that has been in operation since January 2010 in the UK for PSBs holding Crown copyright materials may need to be extended to all PSBs in the UK.
A Review of the TNA Administered
Exception to marginal cost pricing procedure

The amended PSI Directive sets a number of challenges for Member States that include:

- Establishing a baseline as of July 2015 as to how many PSB’s already set charges above marginal cost. This has relevance for the Member State report to the European Commission in the summer of 2018 and to options that a Member State may choose to implement compliance with the exception criteria.
- The large number of PSBs involved.
- Quantifying the economic value of the lost opportunity when PSI is not reused due to setting charges above marginal cost pricing.

Conclusion

The exception to marginal cost pricing procedure is operating as designed. After the first year of operation the number of applications entering the procedure has remained steady at around 5 or 6 per annum. The number of applications granted an exception to charge above the marginal cost price has been low.

A number of improvements have been proposed that would help further streamline and improve the robustness of the procedure. If these proposals are accepted and implemented then this will help prepare the way for future extensions of the procedure.