

Annexe D

Environment Agency case study

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OFT861d

Note:

This report considers information provided to, and gathered by, Jacob Glanville up to and including the end of April 2006. References to 'current', 'latest' etc. information relate to the same timeframe.

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1 INTRODUCTION

- 1.1 The primary aim of the case study is to consider the Environment Agency (the Agency) and to assess the efficiency of the information markets in which it operates. Elements of good practice and potential impediments to the efficient operation of information markets are identified.
- 1.2 This case study relates only to the activities of the Environment Agency, which operates in England and Wales. We have not looked at the Scottish Environmental Protection Agency, the Department of the Environment in Northern Ireland or the distinct regulatory framework in Scotland and Northern Ireland.
- 1.3 This study focuses on the supply of public sector information from the Environment Agency which is available for commercial use and re-use.

2 THE ENVIRONMENT AGENCY

- 2.1 The Agency is an executive non-departmental public body (NDPB) established on 8 August 1995 under the Environment Act 1995.¹ The Agency's sponsoring department is the Department for Environment, Food and Rural Affairs (Defra).
- 2.2 In 2003-04, Agency funding amounted to £805 million, rising to a planned £869 million in 2004-05² and £986 million in 2005-06.³ Sources of funding in 2005-06 are expected to be 65 per cent from government grants, 31 per cent from charging schemes and flood defence levies with four per cent from other income.
- 2.3 The exploitation of Agency data – for example, charging private sector firms for the re-use of Agency data for commercial purposes – is an area of increasing activity for the Agency. Data requests rose from 67 in 2004-05 to 139 in the first nine months of 2005-06. Nevertheless, income from users and re-users of Agency data (not including income from the sale of the Agency's own environmental reports) represents less than one per cent of the Agency's overall income. Revenue currently stands at around £2 million a year, but is forecast by the Agency to rise to slightly in excess of £3 million in 2005-06.

¹ Unless stated otherwise, the primary sources for Chapter 2 were meetings with the Agency and the Agency's various written submissions in response to information requests.

² www.environment-agency.gov.uk > about us > our organisation > how we are funded, and, the *Environment Agency's Corporate Plan 2004-07* (p.44).

³ www.environment-agency.gov.uk > business > charges > why we raise charges > Environment Agency funding.

The statutory obligations of the Agency

2.4 The Agency's statutory obligations are defined according to the Environment Act 1995 as follows, 'It shall be the principal aim of the Agency...in discharging its functions so to protect or enhance the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development' (s4.(1)), and the Agency, 'may do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions' (s37.(1)(a)). One of the Agency's objectives according to its Statutory Guidance is to, 'collect data of appropriate quality and prepare and disseminate information in a timely fashion for monitoring and reporting on all areas of Agency responsibility' (4.1(j)).⁴

Commercial use and re-use of Agency information

2.5 The Environment Act 1995 provides the Agency with a wide remit covering its role. Consequently, it holds a wide range of information on environmental issues. Some of this information is used by other public bodies. However, the commercial use and re-use of the Agency's information is more focused on information in the following three areas:

- environmental reports
- risk assessment, and
- publishing.

Environmental reports

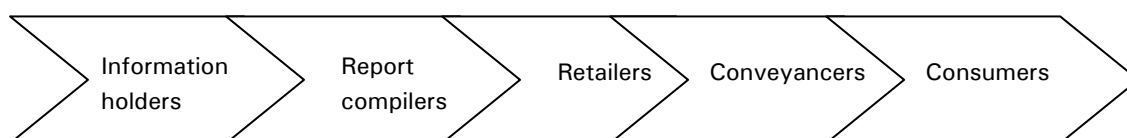
2.6 Buyers of a residential or commercial property need information relating to the surrounding environment – the risk of flooding, or proximity to a

⁴ *The Environment Agency's Objectives and Contributions to Sustainable Development: Statutory Guidance*, Defra (December 2002).

landfill site, for example – to gauge the extent of any impact on its value. This information is usually purchased in a report format, providing supplementary environmental information to a property search report. Environmental reports account for over 95 per cent of the Agency's income from the exploitation of data. The Agency's biggest commercial customer for the re-use of information, Landmark, produced 609,000 environmental reports in the year to September 2005, generating an income of over £1.5 million for the Agency.⁵

2.7 The issues arising from the supply of information related to property search reports were the subject of a recent OFT Market Study (Property searches, OFT810, September 2005).⁶

2.8 The supply chain for the environmental report sector is comprised of five different sections as indicated below.



2.9 **Information holders** collect and hold the environmental information necessary to create an environmental report. The Environment Agency is an important information holder, providing information to around 70 per cent of residential environmental reports.⁷ Other public sector information holders include the British Geological Survey (BGS) and Ordnance Survey (OS). Private sector information holders also have a limited role: Landmark, for example, has a historical land-use database. Most of the information held by the Agency cannot be obtained elsewhere.

⁵ Source: meeting with Landmark.

⁶ [www.of.gov.uk/Business/Market + studies/Property + searches.htm](http://www.of.gov.uk/Business/Market+studies/Property+searches.htm)

⁷ Source: meeting with Landmark.

- 2.10 **Report compilers** collect together the relevant environmental information, and collate it into a useable format for end-users. There are currently only two private sector compilers: Landmark (which also owns Sitescope) and GroundSure. The Agency compiles environmental reports too, and so competes directly with these businesses.⁸ It also provides a website service known as 'What's in Your Backyard?' (WIYBY) that allows the public to search, on a postcode basis, most of the data used to compile environmental reports. According to a report compiler, for a well-informed consumer, this free website service could act as a partial substitute for the purchase of a full environmental report.
- 2.11 **Retailers**⁹ source the compiled environmental reports and sell them on to conveyancers and consumers. The Agency, Landmark and GroundSure all act as retailers, but most reports are sold through dedicated retailers, such as Searchflow, TM Property Services, OneSearch Direct and York Place.
- 2.12 **Conveyancers** typically act on behalf of consumers in buying and assessing environmental reports. Consumers of environmental reports are the people engaged in a property transaction (commercial or residential), and who are ultimately affected by the information contained in the reports.
- 2.13 The Agency therefore acts as information holder, report compiler and retailer in this sector (but not in any other sector). The Agency states that Chinese walls are currently in place between its information holding and compiler/retailer activities (the latter acts as a separate profit centre within the Agency). The Agency has plans to privatise its compiler/retailer business, possibly as a joint venture (Public-Private-Partnership) with a minority shareholding retained by the Agency.

⁸ The Agency refers to businesses licensing data from it as Value-added Resellers (VARs).

⁹ Described as Reseller Agents by the Agency

Risk assessment

- 2.14 Certain environmental information – particularly on flood risk – is used to help assess insurance premium levels (for example, for household insurance policies) and facilitate decision-making. The Agency collects and holds information on flood risk, as do other bodies, including insurance companies Royal Sun Alliance and Norwich Union. It also sells data to the credit reference agency, Experian. Experian is a compiler of risk reports and buys flood maps from the Agency, which it combines with other information (such as house values) to produce risk assessment products. These products are sold to insurance companies who use the information to help refine their insurance policy products for end-users.
- 2.15 Norwich Union, on the other hand, states that it uses detailed information on the risk of river flooding from its own flood risk maps (not the Agency's) to offer insurance to individual properties.

Publishing

- 2.16 The Agency sells environmental information to specialist publishers. Technical Indexes, for example, uses Agency information and other sources to compile databases for technical catalogues or handbooks, used by building design professionals seeking compliance with several legal requirements. Other customers of the Agency in this sector are Barbour Index (serving construction professionals), Lexis-Nexis Butterworths (compiling legal, business and regulatory publications) and Sheila Pantry (compiling reports on health, safety, hygiene and environmental trends).

3 NATURE OF AND ACCESS TO AGENCY INFORMATION

Sole supplier of much environmental information

- 3.1 For most of the environmental information made available by the Agency for re-use, the Agency is the only source. The main exception relates to historical land-use information. Alternative flood risk maps have been produced, but these are designed for different uses to the Agency data.
- 3.2 The Agency's position as the sole provider of certain environmental information is the result of a combination of factors: exclusive statutory powers to regulate the environmental impacts of industry (with associated duties to compile environmental information), a network of local offices and staff to collect data on a national scale, whilst carrying out a range of statutory duties (natural monopoly characteristics), historical environmental information inherited from predecessor organisations, funding from the state lowering the Agency's costs, and, an authoritative reputation for providing reliable environmental information. This last factor is likely to be important given that end-users of environmental information will find it difficult or impossible, to gauge its quality.
- 3.3 As with other PSIHs, where the Agency is not only a sole provider of environmental information but also engages in value-added activities, there is the potential incentive to restrict supply to competitors. Such problems could include the exclusion of potential competitors (for example, refusing to supply information for re-use on reasonable terms), unduly high pricing and the pursuit of commercial objectives. However, as described below, at present, the Agency does not engage in much value-added activity.

Raw and value added information supplied

- 3.4 Most of those interviewed (the Agency, Defra, and two of the three businesses interviewed) take a wide view of the Agency's core activities, and agree that all the information offered for re-use in

environmental reports is raw information. That the Agency's environmental report activity is value-added is also broadly accepted. An area of uncertainty is the correct classification of free website services such as What's In Your Back Yard¹⁰ and information where the Agency is not a sole supplier (currently only historic landfill data but, potentially, flood risk maps too), and if they are value-added services, whether they only utilise existing assets.

- 3.5 The classification of What's In Your Backyard is an example where the Agency regards its production as part of its core task to progressively make its information available by electronic means but businesses see as a value-added operation which they can carry out if they have access to the underlying data.
- 3.6 Unfortunately, the Agency's statutory framework and government guidelines do not enable it to distinguish appropriately between monopoly and competitively provided information activities. Consequently, there could be gaps in service, or existing/planned information services that the private sector could provide more efficiently.
- 3.7 A case-by-case review of the Agency's services in this grey area near the raw/value-added border may be useful in this regard. However, there is some indicative evidence from the Agency and businesses on activities that the market can supply. Based on the limited evidence available, one assessment would be that:
- most of the information collected, maintained on the Agency's internal databases, and disseminated (for example, on a CD-ROM), should probably be considered raw information. Exceptions may include flood risk and historic land-use information (that is, possible

¹⁰ See: <http://www.environment-agency.gov.uk/maps/>

value-added services), due to actual or potential competition in provision from businesses.

- the Agency's web-based services may also be considered raw information, as, like a CD-ROM, they are a means of disseminating information from internal databases. However, given actual or potential provision of similar services by the private sector, and the possible incorporation of additional manipulation and packaging activities over and above that provided with a CD-ROM to businesses, they could arguably be classified as value-added information.

3.8 It is not clear whether the services that may be value-added are justified in terms of cost efficiency arguments. Only a case-by-case analysis of each of the Agency's potentially value-added activities will be able to establish whether or not they are supported by cost efficiency considerations, and, if so, whether their impact on actual and potential competition have been minimised.

Terms of access to Agency information

Raw information

3.9 The Agency's policy is to, 'maximise the information available for re-use'.¹¹ In practice, however, only a small sub-set of all the raw information held is licensed for re-use – where quality is assured, and where businesses have requested that information.¹² The Agency's information asset list is only available on request from the Agency, although some information is also on the Agency's website, and there are plans to enhance this feature.

¹¹ www.environment-agency.gov.uk > about us > how we work > your right to know > IFTS.

¹² A more proactive approach to identifying information for re-use is planned for the future.

- 3.10 Businesses would prefer the Agency to publish a complete catalogue of information that could be made available for re-use, and not withhold raw information on quality grounds. Without accepting liability for the quality of the information provided, the Agency could allow users to make their own assessments of its re-use potential. Carbon emissions data and the complete National Flood and Coastal Defence Database (NFCDD) are given as examples of information that businesses would like the Agency to offer for re-use.
- 3.11 The Agency imposes restrictions on the re-use of information for commercial purposes in order to protect the quality of its data, its reputation and overall objectives, to prevent detriment to the environment, and prevent end-users from being misled.
- 3.12 Businesses generally agree that the Agency is open to specific dataset enquiries and provides effective access to information for re-use. They believe that licence conditions are reasonably transparent (although standardised contracts could be made available from the Agency's website), and acknowledge the importance of licence conditions that protect the quality of Agency information.
- 3.13 However, businesses consider some conditions to be overly complicated, noting that less restrictive clauses may, in certain cases, provide equivalent quality protection. Examples of conditions considered too onerous or inappropriate are the requirement for prior approval of a business' products and retailers (particularly when the Agency competes directly in the same market), conditions restricting a business from correcting obvious errors in Agency data, and a requirement to distinguish between residential and commercial reports, even where both are subject to the same charge. The Agency is adamant that the requirements are necessary to safeguard the Agency, the public and the environment. It also states that it has Chinese walls in place between its IPR management and its commercial information services in relation to Property Search Services.

- 3.14 The Agency and businesses agree that with joint IPR ownership between two or more public sector bodies, re-use can sometimes be prevented or delayed due to the complexity of reaching accord on revenue-sharing arrangements.
- 3.15 The Agency works closely with the Office of Public Sector Information (OPSI) to ensure it meets the Information Fair Trader Scheme requirements to provide 'fair, open and equitable' access policies across different customers. The Agency notes that it has adopted several new procedures to meet IFTS criteria. The IFTS applies, in principle, to all the Agency's information-related activities. In practice, the Agency acknowledges that further work is required to ensure standardised, transparent re-use charges and re-use conditions are applied.

Value added information

- 3.16 The Agency sells its environmental report bundled with a GroundSure report. The agency has plans to privatise its value-added activities in the environmental report sector, and advertised for private sector partners in 2005. It is considering the retention of a minority shareholding in what would be a public-private partnership (a joint venture firm).

4 AGENCY FUNDING AND INFORMATION PRICING

Funding

- 4.1 The Agency does not face a specific externally imposed financial target. However, Defra requires that the Agency, 'seeks to maximise receipts from non-Exchequer sources where this is consistent with the Agency's principal functions and duties', and there are also internal financial targets. Although mechanisms are in place to ensure that conflicts of interest between the Agency's public duties and commercial activities are prevented, perceived conflicts of interest may arise without greater transparency – particularly if the Agency's commercial activities are expanded further. Potentially, this could damage the Agency's reputation as trusted provider of high quality environmental information.

Pricing practices

Raw information

- 4.2 The Agency's charging policy for the re-use of raw information is based on the intended use for the information, rather than the type of information itself.¹³ The main categories of intended use are: public sector purposes, non-commercial purposes and commercial purposes.¹⁴
- 4.3 If raw information is to be passed to a third-party as part of, or in connection with a service provided for a charge, then the Agency's intellectual property rights over the raw information are enforced through either a 'Document VAR Contract' or 'Data VAR Contract' in most cases. Charges for re-use under these contracts are usually in two parts: a fixed annual administration fee (£2,000 and £5,000 for the new

¹³ Agency's internal guidance, '*Agency Data Provided to VARs*'.

¹⁴ Agency's internal guidance, '*Work Instruction: Intellectual Property Re-use and Sharing*'.

standardised Document and Data VAR contracts respectively), and a per-report royalty fee negotiated with individual businesses after they request re-use.

- 4.4 Re-use charges are not based on a rigorous consideration of costs. The Agency is not currently able to calculate the total costs, or identify the precise contribution of any government subsidy or environmental licensing income,¹⁵ associated with a particular type of information activity. According to the Agency, around 95 per cent of re-use pricing is currently reactive rather than standardised – although the Agency is now considering moving to a more structured approach to pricing.
- 4.5 The per-report royalty fees under the new standardised Data VAR contract, currently being rolled out in the environmental report sector, are for the re-use of a standard bundle of five or more of the raw datasets. There have been significant increases in these re-use charges in the past three years, which, according to the Agency, are to fund investments to improve the quality of data and its supply to VARs. The Agency also offers national raw datasets on a stand-alone basis. The Agency is considering the introduction of a new starter discount for businesses.
- 4.6 While the standard re-use charges currently being rolled out in the environmental report sector are broadly welcomed by businesses, it was felt that changes to the structure of charges, and greater transparency, would promote both investment and new market entry.
- 4.7 A specific issue of concern was the Agency's failure to provide businesses with an adequate breakdown of re-use fees in terms of underlying costs. According to two of the three businesses interviewed, current re-use charges are set at what the Agency considers the market

¹⁵ According to the Agency, environmental licensing income only recovers a small proportion of total information activity costs.

can bear – rather than in relation to underlying cost.¹⁶ In relation to recent and planned fee increases in the environmental sector, one business was worried that, where the Agency is the sole supplier of a type of raw information, high re-use charges may be used unfairly to cross-subsidise value-added activities. There was a view that, as the Agency has a statutory duty to collect and disseminate raw information, the related costs should be funded by a combination of government subsidy and environmental licensing income. Re-use charges should only recover the marginal costs involved in putting data into an appropriate form (for example, onto a CD-ROM).

- 4.8 Some businesses felt that the minimum annual fixed fee element of re-use charges presented a significant barrier to expansion for smaller businesses, and a barrier to entry for new market entrants. There was also a perception in the environmental report sector that raw datasets were more expensive when supplied as stand-alone datasets than as part of a bundle.

Value added information

- 4.9 The Agency sells its environmental report together with a Groundsure report for the retail price of £47. According to businesses, at £47 the Agency's composite report is not priced competitively (as equivalent information can be obtained for the retail price of £35). Additional Agency brand visibility may explain why some conveyancers nevertheless purchase the report.

¹⁶ Businesses claim the Agency does not, for example, incorporate business projections of market demand into the process of setting charges.

5 MONITORING, ENFORCEMENT AND GENERAL GOOD PRACTICE

- 5.1 The Agency has a Customer Charter in place with an associated general complaints procedure throughout the Agency, and related internal work instructions, guidance and letter templates – in accordance with regulation 17 of the Re-use Regulations. The Customer Charter, available from the Agency's website,¹⁷ provides full details of how to complain to the Agency itself, to the local government or parliamentary ombudsmen, or to a government minister. The Agency monitors the progress and outcome of all the complaints received. In addition, the Agency has set up a quarterly Data Forum specifically for businesses to discuss with the Agency any issues regarding the supply of information for re-use.
- 5.2 Since the Re-use Regulations came into force on 1 July 2005, the Agency has not received any complaints relating to the commercial re-use of public sector information. Consequently, the Agency was not willing to comment on the effectiveness of the current complaints and redress systems, or the monitoring of compliance and penalties for non-compliance. It was optimistic, however, about OPSI's ability to carry out its relevant complaint handling and redress functions under the Re-use Regulations.
- 5.3 One business felt that the separated accounts kept for environmental report activities should be subject to more effective monitoring.

Good practice

- 5.4 There several elements of the Agency's policy and practice, and developments that are taking place currently in the area of the use and re-use of information that may be considered good practice for PSIHs. These are as follows:

¹⁷ www.environment-agency.gov.uk/commondata/acrobat/customercharter.pdf

- The Agency acknowledges the importance of the Re-use Regulations in relation to policy on the re-use of raw information.
- The Agency aims to maximise the raw information available for re-use, and makes it available in bulk electronic format, allowing businesses to design a range of value-added information products to the benefit of consumers.
- The Agency's centralised unit appears to deal effectively with requests for data / information.¹⁸ Enquiries on the availability of information for re-use, re-use conditions and re-use charge quotes are dealt with in a helpful and transparent way.
- The Agency now has a standard re-use contract with common re-use charges, on a fixed per-report basis, within its most important sector (environmental reports). Increased certainty over future charges will make planning easier for existing businesses, and should also help reduce barriers to entry for potential new entrants. If combined with a lower fixed annual fee element, or some form of new starter discount – a feature being actively considered for introduction by the Agency in January 2007, a further reduction in existing barriers to entry should result.
- The Agency has voluntarily signed up to the IFTS, and recently gained accreditation in terms of 'fair, open and equitable' access policies across different customers (and has adopted several new procedures to meet IFTS criteria). Reflecting these commitments and their obligations under the Re-use Regulations, licences issued to environmental report businesses contain clauses aimed at ensuring non-discrimination between businesses as well as between businesses and the Agency's value-added activities.

¹⁸ Data and Information Exploitation Unit, DIEU, supported by the Information Law Unit

- The Agency has sophisticated internal complaints procedures in place in accordance with the Re-use Regulations. Although no re-use complaints have been received to date, the Agency is optimistic about the effectiveness of the existing complaints and redress systems administered by OPSI.
- Mindful of the need to avoid conflicts of interest between public and commercial objectives, the Agency may seek to privatise its value-added activities in the environmental report sector. Implementation (provided an independent commercial entity is created) should promote fair competition with businesses operating in the same sector.

6 CONCLUSIONS

6.1 Following the areas of good practice outlined above, the main conclusions of this case study are considered under the following sections:

- Statutory function and guidance,
- Conditions of use and re-use of information,
- Charges for use and re-use of information.

Statutory function and guidance

6.2 The Agency's statutory obligations concerning information activities are widely defined, and do not appear to be based on providing information that would not be provided by efficient markets. The Agency cannot, therefore, look to the statutory framework for clear boundaries on the legitimate scope of its existing or future information activities. There could be gaps in service, or existing/planned information services that the private sector could provide more efficiently.

6.3 The Agency acknowledges the importance of the Re-use Regulations 2005 in relation to policy on the re-use of raw information. The Agency's sponsor, Defra, appears to put more emphasis on HMT's 'Fees and Charges Guide'. It is important that Defra and the Agency agree on the key statutes and guidelines.

6.4 Mechanisms are in place to ensure that conflicts of interest between the Agency's public duties and commercial activities are prevented. Without greater transparency, however, perceived conflicts of interest may arise – particularly if the Agency's commercial activities are expanded further.

Conditions of use and re-use of information

Raw information

- 6.5 The Agency aims to maximise the raw information available for re-use, and makes it available in bulk electronic format, allowing businesses to design a range of value-added information products for consumers. The Agency does not, however, publish a full catalogue of the raw information it holds,¹⁹ or proactively make information available for re-use. Businesses may not, therefore, be fully aware of the range of potential re-use opportunities available to them.
- 6.6 The Agency deals effectively with requests for data/information and with enquiries on the availability of information for re-use, re-use conditions and re-use charge quotes. However, disagreements over revenue sharing arrangements and other aspects of re-use can sometimes arise when the relevant IPRs are jointly owned. The re-use of certain raw information by businesses may be prevented or inhibited as a result.
- 6.7 The Agency has an important role as trusted provider of quality raw information: private sector provision may not be sustainable due to the difficulties of gauging the quality of the environmental information supplied to end-users. Accordingly, the Agency applies stringent re-use conditions to protect the quality of raw information supplied, and the Agency's reputation. There may be a case, however, for streamlining the existing licence restrictions so that they continue to protect data quality and the Agency's reputation, while minimising the burden placed on businesses, thus reducing the impact on potential competition and innovation.
- 6.8 The Agency has voluntarily signed up to the IFTS, and recently gained accreditation in terms of 'fair, open and equitable' access policies across

¹⁹ It only provides, on request, a list of raw information currently available for re-use.

different customers (and has adopted several new procedures to meet IFTS criteria).

Value-added information

- 6.9 Mindful of the need to avoid conflicts of interest between public and commercial objectives), the Agency is considering privatising its value-added activities in the environmental report sector. Implementation (provided an independent commercial entity is created) should promote fair competition with businesses operating in the same sector.

Charges for use and re-use of information

Raw information

- 6.10 The Agency aims to set commercial re-use charges for raw information at a market price, with consideration given to costs and expected future market conditions. In practice, however, the Agency does not record the costs associated with particular types of raw information. Consequently, the basis for commercial re-use charges appears to be somewhat arbitrary.
- 6.11 The Agency does not currently keep activity-based accounts for its raw information activities, so the actual role of environmental licensing income and government subsidy in the funding of such activities is not clear.
- 6.12 The Agency now has a standard re-use contract with common re-use charges – on a fixed per-report basis – within its most important sector (environmental reports). Further planned refinements to this approach should facilitate forward planning by existing businesses and should also help lower a barrier to entry for potential new entrants. Further reductions in barriers to entry could be achieved through the introduction of new starter discounts (currently being considered by the Agency) across all re-use sectors, and/or reductions in the annual fixed fee element of the charging structure.

Value added information

- 6.13 Given the limited activity of the Agency in what may be considered value-added information, there appear few problems with the pricing of value-added information. Competitors are able to provide the information to customers cheaper than the Agency, and one issue with this is that purchases from the Agency imply it has some degree of brand loyalty or power among some customers.

Summary table: Snapshot of the Environment Agency against key criteria

	Transparent split between raw and value added information	Basic raw products made available to users	Open licensing policy (for example, no non-compete clauses)	Current returns not far exceeding HM Treasury targets	Detailed cost allocation systems in place	Use of guidance and complaints procedures
Environment Agency	✓	✓	✓✓	✓	✗	✓✓

Key to table: ✓✓ - established system, ✓ - basic system in place, ✗ - no system in place, N/A – not applicable