



John Trippier
Office of Rail Regulation
1 Kemble Street
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Our ref: RTIG-c084-db
27 February 2013

Dear Mr Trippier

Real Time Train Information: Consultation on the Findings of ORR's Review

Thank you for the opportunity to respond to this Consultation.

RTIG is a community organisation whose members represent local authorities, Passenger Transport Executives, transport operators, and the systems industry. Our remit is to further the effective use of information technology in the public transport sector, by means of sharing experience and developing common approaches and specifications.

The RTIG corporate position is broadly in support of the ORR's conclusions. However we differ in a few places, in part in places where we believe that service and regulatory framework need s further clarification. The annex to this response provides our detailed response to the questions posed in the Consultation document.

Please note that RTIG's members may take a different view from this corporate position.

We trust that this input is helpful, and are happy to clarify or explain any aspect of this response which is unclear.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'DB' followed by a flourish.

pp David Brown
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Annex to RTIG-c084-db: Specific comments on the Code of Practice Review

In what follows we have attempted to respond on the basis of our understanding of national policy, coupled with practical considerations in the operation of systems in the marketplace. It would of course be possible to take a different position (eg allowing NRE full control over its data or making it mandatory for NRE to publish free of charge), but we suspect that such a change would require a change in ORR's remit (and possibly even primary legislation).

Our comments below refer to the paragraph numbering in the Consultation document.

4.14: applicants will no longer have to demonstrate "additional benefit" to passengers

Our response to the original Code of Practice draft highlighted our discomfort about the "additional benefit" criterion, as being too unspecific and therefore potentially arbitrary. We welcome its removal.

4.15ff: applicants may still be rejected because of "material adverse impact"

We sympathise with NRE's desire to keep this cause, and even to expand it to "potential" cases. However we agree with the ORR that, as stated, this offers scope for abuse. The mechanism for independent arbitration could address this, by (a) providing an appeal channel for applicants whose applications have been rejected on this ground, and (b) providing a (confidential?) independent channel to which NRE could explain its reasoning.

4.20: "repute" of applicants to be clarified

Again, the definition of "reputable" was one that RTIG raised in its response to the original Code of Practice consultation, and we are pleased to see this being dealt with. Clearly this needs to be resolved but we are content to leave this discussion to ORR and NRE.

4.22f: no support to applicants to improve their application

We support NRE's position here. Just as it is not for NRE to determine whether an applicant's intended use provides "additional benefit", so it is not for NRE routinely to help applicants improve their application. Where NRE wishes to engage in more detailed discussion with an applicant, it should be able to do so, but at that point the applicant becomes a potential business partner of NRE and could then, to some extent, be regarded as "within" the monopoly rather than an external user.

Once an application is accepted then NRE should, of course, have a duty to provide reasonable support to the applicant in gaining access to the data.

4.25ff: independent arbitration to be introduced

We agree that this arbitration process, and the allocation of costs, is fair and reasonable.

4.35ff: applicant process to be streamlined to counter complaints of difficulty

There is a clear need for regulation to distinguish between a procedure which is (or is perceived to be) cumbersome and bureaucratic, which may be simply a natural consequence of the nature of regulated data publication, and obstructive behaviour by NRE. On current evidence we see no particular case to answer on this point; and NRE are clearly aiming to streamline the process as they gain experience. We are content with the current position.

4.38f: standard charges will not be established

We are not convinced by NRE's response on the issue of standard charging. Again this was an issue about which we expressed concern in our previous submission.

It is necessary to distinguish two in-principle cases:

- In the first, NRE are a pure data publisher to third parties. NRE has no interest in the third party's use or purpose, and is not interested in whether or not there is "additional benefit". By definition, therefore, the charges should reflect only aspects of the data publication (eg volume of requests) and not the third party's business model.
- In the second, NRE is working with another organisation on a commercial basis to deliver something in which they have a business interest. In this case NRE should reasonably be able to vary the data feed charges, including to negative values (eg paying someone to publish services in a particular way). But in this case, the use becomes part of NRE's business activity and the whole arrangement subject to regulatory scrutiny.

As a matter of regulatory principle we believe that:

- "book rate" for data publication should reflect the cost of extracting it, publishing it, and supporting the service. A reasonable margin of profit for service development might be allowed (as with other commercial utilities).
- if NRE wishes to charge a *higher* rate than "book rate", this indicates that it believes there is business value in the enterprise and therefore could take it on as a commercial venture of its own; a higher charge can therefore be seen as anticompetitive.
- If NRE wishes to charge a *lower* value than "book rate", this indicates that it believes it is receiving value from the arrangement, even if undertaken by a third party on a non-exclusive basis. Aside from considering where the third party becomes a *de facto* monopoly, this should be acceptable.

NRE makes the specific point that it wishes to incentivise innovative solutions, presumably by "below market" pricing. While this is honourable, we do not believe that it can sit comfortably in an environment where its data publications are regulated. We would prefer to see accounting separation here, whereby NRE provides an explicit subsidy to a third party to buy access to data at "book rate". These subsidies can then be regulated transparently.

4.40 (and 4.32): terms of access to be non-negotiable and confidential

For the reasons cited, we believe that the terms and form of publication under the regulated scheme should be fixed, and not subject to negotiation. Variations, whether initiated by NRE or requested by applicants, should be considered as subject to individual regulatory scrutiny.

5.13: Network Rail data might change the monopoly nature of NRE's data supply

At present, we consider the publication of Network Rail data to be a red herring. Whether NRE's published data leads to good in the marketplace is independent of what good may be derived from Network Rail data.

If, in future, third-party use of NRE's published data declines substantially, then ORR might reasonably consider whether this aspect of the stakeholders' licences is worth pursuing so vigorously.

5.24: the rise of multiple smartphone apps indicates that NRE is not acting anticompetitively

In our opinion, ORR's analysis somewhat begs the question. If (say) only two app developers had chosen to make use of the NRE data feed, it would not prove that NRE was acting unreasonably; similarly, if the range of apps available did in fact have significantly different market powers, that would be a characteristic of the downstream market, not of NRE's data publication.

Happily the analysis has not raised these issues, so need not be of concern. We believe, though, that the other issues raised above still need to be addressed.

5.25ff: NRE could move to "open data" publication like Network Rail and TfL

The move towards "open data" in the public space is now well underway and with political support, and drive, at many levels: individual cities, the UK nationally and the EU as a whole. Transport data is, arguably, in the forefront of this move, and it is reasonable to consider when and how rail data might be "open" (in the sense intended).

Comparing NRE with Network Rail and TfL is, however, misleading: these are public bodies, whereas ATOC is in the regulated private sector. Traveline is a private body though with both public and private members; it does publish under open data, but this because of a Board decision rather than enforced through regulation. Ordnance Survey is a public body, but as a trading fund still provides some of its data services on a commercial basis. As far as we are aware there is no comparable open data publication enforced by regulation in other regulated industries.

RTIG's interest – and we assume ORR's – is to secure a rail industry in which passengers are given the best possible information to help them plan and fulfil their journey. The systems issues that go into fulfilling this aim are very complicated, both technically and commercially. There are already many information services, provided either directly by ATOC or indirectly through third parties. At present there is no objective evidence that moving towards an open data model would be better for passengers than the current régime: different stakeholders take different perspectives.

Given this position, declaring a regulatory position seems premature. DfT does not include an open-data clause into franchise agreements. Providing service information to passengers is already a duty on licence holders, and it is not clear which competitive principle ORR would be enforcing by dictating an alternative means of achieving this.