

17 February 2010

Dear Stakeholder

Consultation on a draft Real Time Train Information Code of Practice

1. This letter asks for your views on the attached draft National Rail Enquiries - Real Time Systems Code of Practice volunteered by National Rail Enquiries, a subsidiary of the Association of Train Operating Companies. This is a short consultation concluding on 2 March 2010 to facilitate the swift adoption of the Code and in light of our having previously gathered views from key interested parties.

Background

2. On 17 November 2009 we concluded our investigation into the conduct of the Association of Train Operating Companies (ATOC) and its subsidiary National Rail Enquiries (NRE) in the provision of Real Time Train Information (RTTI) through its ownership of the 'Darwin' database.

3. We found that, on the basis of the available evidence, ATOC's conduct had not amounted to an infringement of Chapter II of the Competition Act 1998 or Article 102 of the European Treaty. Critical to this conclusion was that we found no evidence that ATOC's conduct in granting access to Darwin had prevented a new product from coming to market or hampered the emergence of new technology.

4. Notwithstanding these findings it is nonetheless the case that ATOC has total control over the supply of RTTI and as a result, to a very great extent, over what the future market will look like in terms of what products and services consumers will ultimately enjoy. This in turn means that ATOC has a special responsibility to avoid allowing its market power to distort the market it supplies so that consumers' interests are not prejudiced.

5. In the light of this unique position we explained in our conclusions that we believed there to be considerable merit in ATOC publishing a Code of Practice which set out, for the avoidance of all doubt, the criteria against which ATOC assesses applications. The dual objectives of the Code would be to:



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- introduce transparency into an area where there is significant market power in the hands of one party and, therefore, a responsibility on that party to demonstrate that it has processes in place not to abuse that position; and
- set out a behavioural framework against which all future conduct can be assessed.

6. I am writing to you now to seek your views on a draft version of a Code which NRE has volunteered in the light of our concerns. The draft Code is copied below, at Annex A. This consultation will also be published on our website and is open to any interested party.

Developing the code – points addressed

7. We have sought views from key stakeholders in order to inform our approach to assisting ATOC (through its subsidiary NRE) in the development of its Code. These views are therefore reflected in the draft Code. For example, NRE has set out:

- overarching principles of providing non-discriminatory access on fair and reasonable terms, to those whose applications for data licences are successful;
- the criteria against which NRE will assess applications for data licences;
- indicative broad timescales for assessing applications for data licences and a commitment to liaising with individual applicants with a view to agreeing timescales on a case-by-case basis;
- the factors that NRE take into account in respect of setting charges for access;
- that data feeds are generally by way of Web Service XML feeds, and a commitment to provide information on current interface specifications and messaging structures in order to assist in the development of an application (given these may change from time to time);
- a commitment not to require more information of an applicant than is necessary to assess their request; and
- an appeal and escalation process for those who may believe their application has not been dealt with fairly, or in accordance with the code.

8. We consider therefore that this Code is a significant step forward in introducing transparency to this area, and thereby facilitating innovation for the benefit of passengers.



We recognise that the efficacy of the Code in achieving this will be best evidenced through its use, and we anticipate the Code being reviewed in due course in light of experience.

Your views

9. NRE aims to formally adopt the Code in the week beginning 8 March 2010. In advance of that, ORR would welcome your views on whether the Code fulfils the objectives above and provides you with sufficient information to construct a compliant application and with comfort that your application will be dealt with fairly and reasonably.

10. These views should be provided to John Trippier (john.trippier@orr.gsi.gov.uk) by **5pm on Tuesday 2 March 2010**.

Yours sincerely

A handwritten signature in black ink that reads 'J.R. Thomas' is positioned below the 'Yours sincerely' text.

John Thomas

Annex A:

NATIONAL RAIL ENQUIRIES - REAL TIME SYSTEMS CODE OF PRACTICE

Introduction

National Rail Enquiries (NRE) has developed a number of systems to provide real time information to passengers travelling by rail in the UK.

NRE is keen to ensure that access to these systems is open to third parties who want to invest in the industry, inject new ideas and innovate with a view to expanding the range of applications available to passengers. This draft voluntary Code of Practice, agreed with the ORR – subject to public consultation, sets out the process for accessing those systems and the criteria on which access is granted.

The systems NRE provide include live departure and arrival information and real time journey planning as well as alerting services and disruption information.

Purpose

Publication of this Code is designed to bring more transparency to the licensing process and help developers understand the application process and enable them to work with NRE to improve and enhance the products and services available to passengers. NRE will consider applications for access to these systems on a non-discriminatory basis, and will provide access on fair and reasonable terms. In order to achieve this, certain criteria need to be met to enable access to be granted. These criteria are:

- Whether the proposed use is of additional benefit to passengers. Applications which in NRE's reasonable opinion are of demonstrable benefit to passengers will be granted unless outweighed by a material adverse impact on TOCs (whether financially, strategically, operationally or in regards to their reputation or the reputation of the industry as a whole).

- Whether the applicant is a reputable company. This criterion may include the applicant's previous track record of past developments, and will also include any previous dealings with NRE. Applicants who use NRE data without permission or breach their licence terms may be disqualified for consideration for a licence.

In the event that an application is refused NRE will provide the applicant with an explanation and full reasons for the refusal.

Status of the Code

This code has been written by NRE on a voluntary basis, but in conjunction with the ORR, to provide clarity to potential licensees of Darwin data following on from the ORR's 17th November 2009 decision, available at: <http://www.rail-reg.gov.uk/upload/pdf/rtti-decision-011209.pdf>. The Code develops and consolidates the existing processes that NRE has used for assessing potential licensees.

How to use the Code

If you feel a licence decision has been unfair or has not been handled within this code you should contact in the first instance Chris Scoggins, Chief Executive, National Rail Enquiries, 3rd Floor, 40 Bernard Street, London WC1N 1BY. All concerns will be dealt with by the Chief Executive in a fair and impartial way within reasonable timescales. His decision with full reasons will be provided to you in writing.

If, following receipt of this decision, you still feel that your application has been treated unfairly or has not been handled within this code; you can apply, setting out your full reasons why you believe this decision should be revisited with reference to the considerations set out in this code, for your complaint to be escalated to the Board of NRE.

Commitments and guidelines

The process of awarding a Darwin licence is in two stages. First there is the initial assessment of the proposed application and licensee, followed by a second stage where the details of the application and scope will be discussed

and agreed. By way of guidance, the data is usually provided by way of Web Service XML feeds. NRE will provide details of the current interface specifications and messaging structures on request in order to assist in the development of an application.

NRE does not provide service levels in respect of its data provision, since it is obtained from sources external to NRE. However, NRE does commit to treating all licensees without discrimination regarding service levels.

a) Process for applying for a real time train information systems Licence.

Applications need to be made in writing either by E-Mail to NRELICENSING@ATOC.ORG or by letter to Data Licensing, National Rail Enquiries, 3rd Floor, 40 Bernard Street, London WC1N 1BY.

Any application needs to include the following:

- Details of the proposed use including the commercial model (charging mechanism, funding etc.), projected volumes, services to be offered, support arrangements, how the service will be presented to the customer, the platform it will be offered on and any other relevant details. NRE only require the information necessary to assess the request but it is important to note that the more detail supplied at this stage the quicker the application process will be.
- Details of the applicant. This will include financial details and details of experience, past developments and references.

This application will be reviewed against the approval criteria and NRE will respond within 21 working days. In some circumstances this response may be a request for further information, so it is in the applicant's interests to ensure that as much information as possible is included in the original application.

If the applicant satisfies the first stage, NRE will then enter into the second stage, involving detailed discussions on the proposal covering scope, presentation of the data, charges, accreditation etc. It is not possible for NRE to commit to a definite timescale for this stage, as it is dependent on the complexity of the proposal, and the availability of NRE technical staff

and the timely response of the applicant to requests for information. However, NRE will give an indication of time scales based on its experience and will liaise with the applicant with a view to agreeing the same. To date these timescales have been typically between 1 and 3 months. NRE will, in any event, use all its reasonable endeavours to ensure the process is completed as quickly as possible.

If the application is approved then the applicant will need to sign a licence for the NRE services prior to using the data.

Applicants will need to submit a separate application for each permitted use.

b) Charges

NRE adopt a case by case approach to charging for access to their systems. This approach is designed to encourage innovation and allow smaller developers to enter the market. It is also designed to encourage promotion of rail travel.

Charges will be set reflecting the usefulness of the application to the public, level of innovation, costs and returns arising to the applicant from the application, timescales for development, impact on NRE and impact on TOCs. The charges will also reflect the lifetime cost of the application to NRE.

NRE is willing to adopt a flexible approach to charging, to be agreed with the applicant, including, for example, a fixed annual fee, fee per transaction, a share of revenue and will be designed to fit with the charging model of the licensee and the costs incurred by NRE.

The charges will be discussed and agreed during the second stage of an application.

c) Technical assistance

Subject to availability, NRE may be able to assist applicants with their application, subject to NRE's entitlement to charge for such assistance at an agreed daily rate.

NRE are under no obligation to supply this assistance but will use its reasonable endeavours to provide what it can.

d) Form of service

NRE will generally supply "pull" services, i.e. where queries are made to the NRE systems and the response is sent back for the developer to present to customers. This allows for consistent calculation of results and maintains the security of the data.

NRE will consider "push" services, i.e. where the data is sent to a developer for them to interpret and present to the customer. This type of service will be allowed if, in NRE's reasonable opinion, there are sufficient safeguards in place, first, to ensure security of the data, in particular that it does not become available to unlicensed third parties, secondly, to ensure the data is not subject to corruption or amendment and, finally, that output of the application is consistent with the information provided by NRE. Provided such concerns are met, NRE will not unreasonably refuse access.