

## **Intellect Paper for the Department for Transport**

### **Consultation on the Proposed Legislation to Transpose the EC Directive 2004/52**

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## **Background**

Intellect is the UK trade association for the IT, telecoms and electronics industries. Its members account for over 80% of these markets and include blue-chip multinationals as well as early stage technology companies. These industries together generate around 10% of UK GDP and 15% of UK trade.

The following paper provides the views of Intellect member companies on the proposed legislation to transpose the EC Directive 2004/52.

Intellect welcomes the opportunity to provide input at this early stage and looks forward to a programme of continual engagement with relevant government departments, agencies and other stakeholders.

## **Introduction**

Intellect considers work in this area to be an important part of Transport policy, and we welcome the opportunity to comment on the transposition of EC Directive 2004/52. Intellect members are supportive of the move towards the promotion of interoperability within new technologies in this area. Intellect is keen to ensure, however, that the regulatory environment does not over-burden the industry, and that it has a positive effect for consumers.

Intellect's response in this document is in two parts.

- Part 1 addresses concerns held by Intellect members regarding the area of road-pricing, and covers ground that is outside of the remit created by the consultation document and the questions. Intellect believes that, as the IT industry has a vital part to play in the delivery of systems supporting the directive, it is important that their concerns are represented.
- Part 2 addresses the specific questions posed in the consultation document.

## **Part 1: Intellect's overall position**

Intellect promotes the use of private sector-type solutions for both the technical ICT (hardware and software) and managed services aspects of road-pricing. The industry is ready to implement and support road-pricing schemes, with a number of schemes across the world already demonstrating the benefits and showing how successful implementation can be achieved. Intellect also encourages the use of systems with higher levels of automation than are currently found in the UK; technologies are maturing that can reliably make this a reality, providing further benefits to the UK.

Intellect is keen to ensure that lessons have been learnt from previous work in this area, both in the UK and in the EU, and to reinforce the point that legal issues around enforcement – particularly the standards of proof that are applied in the Courts - should not become an insurmountable obstacle to the practical application of road-pricing systems. Legislation to establish schemes should perhaps include explicit reference to the manner in which data generated by the system can be challenged in proceedings.

Intellect members believe that for a national road-pricing scheme to be effective buy-in from local authorities will be required. It is therefore important that industry and central government work together to ensure that it is as simple as possible for local authorities to adopt schemes, and to ensure that these schemes are not so different as to over-burden road users. Intellect members are also of the opinion that it will require a positive educative campaign between industry, local authorities, and central government to explain to the public the reasons why road-pricing is being adopted. It is important that Intellect provides the natural environment for exchanging ideas on how to make road charging a practical reality.

While reviewing the responses to the questions the following points should also be considered.

## **1. Innovation**

Intellect members agree that achieving interoperability will inevitably involve a degree of standardisation and restriction. However, the Directive's restriction on the choice of technologies that can be implemented may, to some extent, limit innovation. It may be, for example, that more economical wireless data communication methods appear with developments in WiMAX and other wireless broadband systems. Part of the management of road-pricing schemes should be to allow all stakeholders to be made aware of new technologies, and to help develop and evaluate these technologies.

In particular, the specification in the Directive of GSM/GNSS technology must certainly be changed. This is second-generation cellular radio technology, but third generation (3G) is already available throughout Europe. Where there is no 3G coverage, the service falls back automatically to 2G. The Directive must be amended to include 3G as well as GSM/GNSS.

Intellect also considers that it may be necessary in the future to phrase standards in such a way that they can accommodate any other future technologies. This would create a regulatory environment where the output, not the technology employed, is the main focus, ensuring that the output of new systems is compatible with existing systems.

## **2. Holistic service architectures and operational models**

The development of holistic service architectures and common operational models would be of significant benefit to a European electronic tolling service (EETS) through providing an overarching design within which particular national or local schemes could take their places. In particular, it must be recognised that back office interoperability will crucially define a European or national electronic tolling service, as much as the technical specifications for on-board units (OBUs).

While a minimum government specification may be necessary to ensure that OBUs are interoperable, Intellect believes that this should focus on the output level – specifically communications frequencies and protocols, data outputs, inputs and fraud prevention methods – rather than detailed design specifications.

## **3. The role of government**

National governments and the EU Commission will have a critical role to play, particularly around the issues of adherence to interoperability standards and procurement

If procurement focuses on service providers, rather than the direct supply of equipment, then it will be essential for government to play a defining role in the relationships between the service providers at a business, procedural and data content level. In this case, Intellect would recommend that an EETS operational model, recognising the business and service components that could be procured separately in a competitive market, be agreed. The EETS operational model would also need to consider enforcement and the varying regimes that are adopted by different jurisdictions.

## **4. The nature of service providers**

Intellect believes that suitable EETS service providers would be private sector organisations operating under service level contracts with the scheme 'owner'. Intellect members have a lot of experience in providing services to scheme owners in this environment and would welcome the opportunity for further discussion with Government. Intellect recognises that the scheme owner would typically be a local government organisation, transport authority or national government department; there may be occasions when the scheme owner would be a franchisee, but these would still require a legislative underlay to support them.

## **5. Relationships**

The relationships between all the stakeholders involved in the scheme will be dependent on the operational model that is employed. The operational model will define the key processes,

service providers and relationships between them. As indicated above, it is essential that the operational model be clearly defined, along with the allocation of risk and liability, before the detailed relationships can be determined.

## 6. Industry engagement

The Office of Government Commerce recommends early involvement of suppliers. Suppliers welcome the opportunity to meet with prospective customers and advise them on the “do-ability” of their idea and to discuss key issues related to potential solutions. This allows suppliers to show the client how the market can meet their need, provides early visibility of key risks and issues, and gives suppliers the opportunity to manage expectations of what the market can and cannot contribute to the proposed programme. Intellect fully endorses this approach and offers a Concept Viability service to public sector clients to help them consult the market.

Through its Concept Viability service Intellect is inviting public sector clients to take market soundings to test the practicability of their ideas at the earliest possible stage. Within the Gateway process this would be before Gate 1 (and may even be before Gate 0), and before any public commitment (political, financial or “go live” date) has been made. In essence, the earlier the concept is tested, the better; clients will gain greater understanding of the achievability of their ideas and high-risk proposals can be modified or abandoned before any substantial investment has been made.

A full list of the projects, which have used the service, can be found below:

- Cabinet Office: Project ISAAC
- Cabinet Office e-Government Unit: Shared Services
- Department for Constitutional Affairs: DISC Programme (two workshops: procurement and packaging strategies)
- Department for Constitutional Affairs: HR Shared Services
- Department for Education and Skills: Information Sharing Index
- Department for Education and Skills: Managing Information Across Partners Programme
- Department for Education & Skills: Youth Opportunity Card
- Department for Work and Pensions: Document and Output Management Programme
- HM Debt Management Office: e-Bidding
- HM Land Registry: e-Conveyancing
- Home Office: ID Cards
- Home Office: Refugee Integration Loan Scheme
- Learning & Skills Council: Re-tendering Project
- NHS Wales: Service Orientated Approach to Healthcare
- Office of Government Commerce: Commercial Activities Re-competition (CAR) Project
- Office for National Statistics: 2011 Census
- OGCbuying.solutions: Policy Consultancy
- Scottish Executive: Shared Services
- Suffolk County Council: Waste Management
- Suffolk County Council: Transport Procurement
- Training & Development Agency: Teaching Information Line

Clients with business needs that require either a large-scale commitment or demanding solution would approach Intellect to test the viability of the concept. As the leading representative body for the ICT industry with approximately 1,000 member companies, Intellect is well placed to draw on the expertise clients need. Intellect is also technology-neutral and so will be able to draw on a range of companies providing different solutions, thereby enhancing the variety of options and perspectives available to the client. If the client suggests the involvement of specific companies outside its membership, Intellect is pleased to include them in the process.

This service is intended to assist the development of a more comprehensive assessment of projects at their earliest stages. To this end, the assessment proposed in this document should not be viewed in isolation, but rather as part of a wider consultation undertaken by the client (i.e. this will not replace work which the client undertakes on proof of concept or feasibility, but rather seeks to inform it).

## **Part 2: Responses**

### **a) What evidence should be required by the national authority to demonstrate whether the Regulation is or is not being complied with?**

Intellect would expect that the responsible authorities would have mechanisms in place to ensure plans for new schemes were compliant prior to implementation. This may include sharing of hardware, software and business process information, and Intellect hopes that the mechanism would be accredited. A key concern for Intellect is that any evidence that is required does not place too great a regulatory burden on the industry, or reduce the ability for companies to compete on a level playing field.

### **b) What evidence should be required by the national authority to demonstrate whether a tolling scheme should be exempt from the Regulation?**

To be exempt a tolling scheme needs to demonstrate that it affects only a small number of vehicles, very intermittently, or that only a specific geographic area is affected.

Intellect considers that the responsible authority must continuously assess whether exemptions are being used as a loophole, and to stop this practice where it deems this to be the case. It should also continuously monitor the effect of exemptions on consumers, and come up with appropriate solutions where exemptions become a problem for the consumer.

Intellect members also consider it to be essential that, while recognising their independence, the devolved institutions do not get out of step with UK authorities in their handling of exemptions.

### **c) How quickly should the national authority require a tolling operator to adopt the Regulation when it is judged that the regulation needs to be complied with?**

Scheme plans should contain information so that the responsible authority can assure regulatory compliance from the beginning. Where changes have been made to an existing scheme that means it is now non-compliant, changes to make it compliant should be required as soon as possible, within a maximum period of two years.

### **d) What estimates are you able to make of the costs and benefits of compliance with the technical requirements set out in the regulation?**

Intellect considers that the potential costs of non-compliance and non-enforcement are very high, including consumer safety and loss of revenue.

The national and Union-wide economic benefits of a truly interoperable regime for road-pricing are as significant as those associated with the most important harmonisation programmes. Transport is a critical infrastructure component of the Union wide economy and therefore must be operated under a consistent road-pricing regime in all member countries. Compared with non-enforcement, the cost of enforcement will be far less. The benefits of compliance are EU-wide as well as national, with interoperability allowing greater economies of scale for the industry, which in turn will benefit the consumer.

### **e) How great a role should the Government play in determining the common components of EETS schemes to ensure they are interoperable?**

The Government should take a central role in ensuring that standards on hardware and software are met to ensure interoperability. This could be through a central department, agency or regulator. Their actions should be informed by seeking advice from industry and other key stakeholders.

### **f) Would you prefer EETS providers to be national authorities, local authorities, local toll operators or other private companies?**

It is Intellect's view that road-pricing schemes will mean that driving may well take on the characteristics of a utility (ie those of gas, electricity and water) for the consumer. From this perspective the utility sector should act as a reference for EETS providers. Private companies

contracted by Government will promote competition and benefit consumers, while Intellect would also support the creation of a regulator at the national level to protect consumers and ensure compliance with standards. Government should consider how all regulators within the EU would interact.

**g) What is required to be defined in the relationship between vehicle operators, toll operators and EETS providers?**

Before being able to answer this question, first it must be determined who owns the customer relationship. Depending on whether this is the toll operator, EETS provider or Government (if Government is neither of the first two) different hierarchical relationship structures will be created.

Before examining the relationships between vehicle operators, toll operators and EETS providers Intellect members consider that it is important to understand the key fundamentals of the system. This includes an understanding of business models aggregated across the EU; an analysis of risk, including liability, between the various stakeholders in the system; defining the scheme owners; creating a common classification of vehicles (based on emissions as well as physical vehicle characteristics); and ensuring that the regulatory environment is able to arbitrate disputes between participants, with statutory instruments used to support the arbiter.

**h) Which body should be responsible for enforcing payment and ensuring correct calculation of toll charges by vehicle operators using the EETS?**

Intellect considers that ensuring correct calculation and enforcing payment is ultimately a state role, whether the payment is considered as a tax or a charge. The private sector could play a role in enforcement but would require the backing of legislation.

Correct calculation of charges contains two different aspects. One is the calculus whereby the actual usage is related to a tariff to determine the appropriate charge and the other is the tariff itself, which could be very different across the EU and could be very complex. Intellect members consider that both the calculus and tariff aspects of EETS should be scrutinised by bodies with national legal authority. The calculus would be analogous to the existing "weights and measures" regulation applied by local authorities while the tariff structure would be a matter for the regulator.

**i) Accepting that the EETS proposal is no more than an outline at present, what estimates are you able to give of the potential risks and costs associated with the EETS?**

Costs and risks will depend on the development path of EETS and this will in turn be affected by government policy on developing operating models, standards and interoperability. A great deal more work needs to be carried out to determine cost effectiveness in a number of different scenarios. It will also be important for the lessons learnt from the LRUC scheme by HMCE and DfT to be considered in the design of any system developed.

Intellect members consider that a central clearing house for pan-European payments will be required (although without the need for a physical clearing facility). It may be useful to consider the analogies provided by the Universal Postal Union, which had a global clearing house for handling so called "Terminal Dues", and the WEEE directive, which necessitate pan-European clearing. These examples should provide a reference point for examining the processes and risks and costs involved with the international payment clearance system.

## **Conclusion**

The views expressed in this document may be summed up as follows.

- Intellect members welcome the creation of an EU wide framework for harmonising the technical and business process aspects of road-pricing regimes

- Intellect members are confident that both the technical and managed services capabilities of the industry are eminently capable of meeting the demand for such systems
- While the private sector is quite capable of delivering the service there is an irreducible requirement for Government to create the statutory basis for the operation and enforcement of the scheme and the standards underpinning it
- Whenever Government wishes to proceed toward a real implementation Intellect looks forward to early and constructive discussions to ensure that the design phase is well considered and takes into account the latest technical and service delivery capabilities of the industry
- Intellect recognises the challenges presented by the interoperability of electronic toll collection systems and calls on the Department for Transport to ensure that it manages the evolving supplier landscape and any forthcoming procurement process on the basis of openness and partnership, in line with the behaviours outlined in the Intellect IT Supplier Code of Best Practice and consistent with the SRO/SRIE initiative

### **Next Steps**

Intellect looks forward to discussing these issues in greater depth with relevant government departments, agencies and other stakeholders with a view to ensuring that the transposition of the EC Directive 2004/52 leads to successful road tolling systems for all stakeholders.

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