

Urban Transport Pricing and Data Protection Issues

Professor Ahti Saarenpää,
The Institute for Law and Informatics (University of Lapland)

1. PERSONAL DATA AND PRIVACY

In our digital cybersociety - highly networked digital society - essentially all information systems have considerable legal significance. And the work we do is work with information. We often speak about *informational work*. It is our daily work today.

And when using information systems, we mostly process information about people - ordinary citizens. We speak about *personal data; our data*. And we speak about *privacy; our privacy*. There is a lot of personal information in all kind of data registers, data banks and data warehouses. *Data protection legislation* is enacted in order to protect us and our privacy and our data. We, not the government or private companies, in fact own originally our self and our personal information.

When describing the legal protection of personal data or privacy in a certain country for an international readership, you can run into the typical difficulties of modern comparative law. It is difficult to remove individual legal institutions from the *legal culture* in which they operate. The EC Personal Data Directive has considerably reduced these problems, but it cannot remove them totally.

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The directive is of course a standard for comparison but not a window into legal culture. The many interfaces of personal data protection to other legislation and rights and to the different practices in society significantly shape that institution in each member state of the European Union.

I will not go into the details of data protection legislation. It is more important to discuss the relevance of data protection in a modern society. However it is also important to notice that we are discussing our fundamental rights when discussing data protection. That's why article 1 in the personal data directive should always be visible when we begin to analyze data protection problems.

1. *In accordance with this Directive, Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data.*
2. *Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection afforded under paragraph 1.*

It is often thought that data protection is something new. That is in fact not true. The directive is a new one, the institution older. Dealing with something which seems to be new always requires us to go through the old on the way. Nothing begins from scratch, not even in the

digital cybersociety. If the old is left to lie fallow, then the relationship between old and new easily goes unnoticed.

This is what mostly has happened to *privacy* as a central part of the *law of personality* in modern society. Privacy has not been part of the front door of the house of justice. We have had to approach it humbly through the kitchen. And we still need good lawyers and judges to observe the practical borderlines of privacy.

A judge should endeavour to know the purpose in each and every law; otherwise it will be misused and skewed into something other than that which was intended. Olaus Petri (1493/1497-1552).

2. DATA PROTECTION AND CYBERSOCIETY

After these preliminary observations, five basic questions come to mind which we would do well to ask ourselves under the informational circumstances when discussing the problems of urban transport pricing and control systems. These are:

- 1) Is the information system we are working with already legally regulated in one way or another?
- 2) Is the system one whose introduction and development require special, “purpose-built” legislation?
- 3) Can the legal issues associated with use of the system be regulated effectively at the national legislative level?
- 4) Is the system one which might affect or restrict people’s statutory fundamental rights in some way?
- 5) Is the system one which might affect or restrict human rights?

These five questions - the list could of course be longer too - all point to profound change in society. And that is that lawyers are needed in different tasks, and needed earlier in the completion of those tasks than before. A lawyer should no longer be the necessary evil that is called in when something has gone wrong. Unfortunately, even in public administration and a typical planning process, lawyers are usually not activated.

What is important here is not so much that one resorts to a lawyer, however. The real question is what kind of lawyer we turn to. The traditional administrative lawyer or computer lawyer has not necessarily noticed the significant change we have been experiencing, over the past five to ten years in particular. The structure of law has changed. We speak about the deep structure of law. And we speak about the constitutional state.

And at the same time, respect for the individual has deepened greatly. When we speak of *Information Law* today, we do so with a far more serious respect for the individual than some years ago. As the recital to the European Personal Data Directive says, *information systems have been created to serve people*. An additional purpose of the systems - but one always subordinate to the first - is to serve administrative needs, the exception being special systems required in the interest of public order and security.

Whereas data-processing systems are designed to serve man; whereas they must, whatever the nationality or residence of natural persons, respect their fundamental rights and

freedoms, notably the right to privacy, and contribute to economic and social progress, trade expansion and the well-being of individuals;

There is no single legal solution that would tell us how we might best deal with the legal implications of road charges and pricing. Even the question of how pricing and the control which is part of it restrict individuals' fundamental right of movement is a problematic one. After all, we are dealing with use of *the infrastructure*, which necessarily brings the important principle of *public service* into the picture.

The situation is just as complex from the point of view of *personal data protection*. If we build a system which contains even a limited quantity of personal data, it is a personal data file. And we have to take the relevant data protection legislation into account. And as the Personal Data Protection Act for example in Finland is a general law - exceptions to which can be enacted through other legislation - its basic provisions apply to road charging systems as well.

Personal Data Act, section 2: The provisions of this Act apply to the processing of personal data, unless otherwise provided elsewhere in the law.

From the technical point of view it may seem very attractive indeed to connect the toll systems to some kind of digital identity card. We already have such a general card in Finland, although few use it yet due to the limited range of services it offers at present. But we are at the same time faced with an *information security problem* straight away here.

3. INFORMATION SECURITY

In the digital cybersociety, *information security* is or should be one of the main elements when building information systems. It is easy to collect personal information and it is easy - too easy - to crack those systems too.

Information security can and should be assessed from a number of different perspectives - its content, the technology and organization involved, and its social and legal dimensions. In the cybersociety we have to add to those the ever relevant international perspective as well. In fact, we can - and must - speak of information war as a new form of warfare. And that war is already underway.

Society's recognition of a new computer related information security has travelled a variety of paths over the years. One of the more visible signs of this has been the legislation on personal data protection, computer crimes and telecommunication activities. Somewhat less conspicuous and familiar are the regulations enacted on national security.

Perhaps the most interesting aspect of the development of data protection legislation is, that it has linked data protection and data security. Appropriate data protection requires appropriate data security. Given the crucial role of data security in realizing the fundamental of the citizen in cybersociety, how could one possibly justify data security being regulated through lower level regulations and technical guidelines rather than proper statutory regulation? The answer is, that there is no justification. Unfortunately in Finland and in many other states we do not have a general data security act. We really should have.

4. SOME CONSLUSIONS

I do not want to continue the discussion about data protection and information security at a general level any more. We could and we should continue it of course. But in our context I would like to go to some practical conclusions too.

What we are dealing with is not simply citizens' fundamental rights and the market or the government, but data resources and the critical role they play in a democracy. Information resources are simply too important in the cybersociety for us to let their worth be determined by market forces or bureaucratic effectiveness only.

Whilst keeping all that in mind we can continue with the next important questions concerning road charging systems:

1. Do we need a system with personal information at all?
Answer: We have as citizens our right to anonymity even when using roads and urban transport systems.
2. Do we need a system or systems - payment or control systems - with connections to other information systems?
Answer: There is always a huge risk when linking different data systems.
3. Do we need a system with service providers?
Answer: What is the role of markets when citizens are using their fundamental freedoms?
4. Do we need a system with public access?
Answer: In an open democratic society, who monitors us, and when and why?
5. Do we need a system with the principle of public service?
Answer: Yes, we do; we must be able to exercise our fundamental rights.

At the end I would like once more to point out, that our right to privacy and our right to the freedom of movement are both important fundamental rights. In the light of their magnitude and the way in which they are legislated, we might term them both *daily fundamental rights*. Please respect those when planning urban road toll and charging systems

For further information about this paper, please contact:

Professor Ahti Saarenpää
Faculty of Informatics
University of Lapland
Näädanpolki 8 C12
96500 Rovaniemi
Finland

Tel: (358) 16 341 2548
Email: asaarenp@levi.urova.fi

Road Pricing Systems in Urban Areas from the View of European Community Provisions

Dr. jur. Stefan Klinski

1. INTRODUCTION

The introduction of road pricing systems in cities and urban areas that face traffic problems is an interesting way of environment and transport policy. It could help to solve problems of air pollution and traffic noise, to win back lost attractiveness for living in urban neighbourhoods and to force the use of less harmful transport alternatives. The major problem of introducing road pricing may be to get the necessary acceptance. Many people take the right to drive cars in the city for granted, so that the idea of charging the use of city streets in addition to parking fees and the duty of paying taxes on automobiles and fuel encounters strong resistance.

On the other hand we have to look at the legal hurdles for such concepts. Road pricing systems have to be constructed in a way that is compatible with the requirements of national and European legislation. Legal problems must be identified and solved in an acceptable manner.

With respect to national provisions there are some typical questions that can only be answered – as the German example shows – based on a specific analysis of the national law. These questions are:

- Do the cities themselves have the authority to regulate road pricing?
- Are there conflicts between road pricing approaches and national provisions for taxes, community rates and charging?
- Is there an adequate justification for the indirect restriction of using cars concerning national provisions of individual rights?
- Are there any other relevant barriers for the concrete application of road pricing systems related to civil rights (e.g. regarding to data protection)?

Those questions are not at issue in this article. This article focuses only on EC regulations (*excluding the field of data protection, which is subject of another lecture*). With regard to the legal problems related to national law it is necessary to thoroughly analyse the respective relevant national provisions. The German example shows, that the majority of the problems may not involve civil rights but questions of legislative competence and the national systems of taxation and other charges. In Germany, we have only one real problem concerning national provisions: At current state, national law does not give the authority for regulating road pricing to the communities. The legislative competence for introducing such systems is vested to the federal states (*Bundeslaender*). However, the *Bundeslaender* are not authorised to expand a road pricing system to federal roads (e.g., *Autobahnen*). Under the current situation, it is, therefore, not possible to introduce a comprehensive community road pricing model, unless a legislative authorisation is adopted.

2. THE REQUIREMENTS IN EC PROVISIONS

At the moment, there are no specific EC regulations on road pricing systems for urban areas. Within the foreseeable future this situation will remain unchanged. It is not expected that EC institutions will take initiatives to adopt specific provisions or a legislative framework for such approaches.

That does not mean, however, that EC provisions would not be relevant for road pricing at all. There still are some major EC regulations which have to be complied with and can be important, either in general or, at least, in some specific cases of implementing concepts.

First, EC law provides particular binding regulations for charging heavy load vehicles. Second, you will find certain applicable rules in the EC Treaty and a number of directives on other subjects which might be relevant for the issue at stake. These sectors are: transport, taxes, public service and state aid.

3. THE DIRECTIVE 1999/62/EC ON CHARGING HEAVY LOAD VEHICLES

The Directive 1999/62/EG¹ is entitled to be a means “on the charging of heavy goods vehicles for the use of certain infrastructures”. Its aim is to eliminate distortions of competition between transport undertakings in the Member States. For this purpose the Directive is based upon two major instruments. The first instrument obliges Member States to harmonise the national taxation systems for heavy load vehicles, the second gives permission to establish certain mechanisms for charging infrastructure costs to hauliers.

The central aspects in brief:

- The Directive fixes certain requirements for motor vehicles intended exclusively for the carriage of goods on roads and that have a maximum permissible gross laden weight of 12 tonnes (Art. 3 para. d)). With respect to those vehicles, Member States are enabled to establish specific kinds of road pricing systems, but they are prevented from introducing other types of charging systems, unless the Directive itself provides for such measures.
- The Directive provides for two charging possibilities. First, Member States can demand a “user charge”, defined as a “payment of a specified amount conferring the right for a vehicle to use the infrastructure ... for a given period” (Art. 3 para. c)). Second, Member States can create a system of “tolls”, based on the distance travelled by the vehicle (Art. 3 para. b)). In the case of “user charges” the Directive sets out certain maximum price levels (Annex II). In contrast, the “toll” in its average “shall be related to the costs of constructing, operating and developing the infrastructure network concerned” (Art. 7 para. 9). External costs shall not be included.²
- In principle, both types of charging heavy load vehicles shall only be imposed on users of motorways and of other multi-lane roads with similar characteristics. As an exception, “tolls” and “user charges” may also be imposed on users of other sections of the primary road network for some specific reasons, e.g. for safety reasons (Art. 2 para. 1). In

¹ Directive 1999/62/EG of the European Parliament and the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, O.J. 1999 L 187, p. 42.

² To the application criteria see: European Court, 26 September 2000, Case C-205/98 (Commission ./ Austria – „Brennertoll“), notes 48 ff..

addition, Art. 9 explicitly stipulates that the Directive “shall not prevent the application by member states of (...) parking fees and specific urban traffic charges” (Art. 9 para. 1 sec. b).

In consequence, the Directive 1999/62/EC does not limit the possibility to establish road pricing systems in urban areas. According to the provision of Art. 9 para. 1 sec. b) heavy load vehicles can be included in such charging systems. Even if a community intends to include motorways in their road pricing concept, it is not necessary to provide for an exception for heavy goods vehicles concerning the use of motorways. The charging criteria should not match with the provisions of the Directive.

4. TRANSPORT PROVISIONS OF THE EC TREATY

Apart from the Directive 1999/62/EC there are no specific regulations in EC law that affect road pricing concepts. It is to examine, therefore, whether the higher level provisions of the EC Treaty on transport policy may have some impacts on this issue.

The single legal norm of the transport chapter with significant effects on road pricing could be Article 72 EC Treaty. It prohibits a specific kind of discrimination: Unless there are no specific regulations laid down in Directives, Member States are prohibited from governing any subject of transport policy in a way which is “less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of the State”.

The European Court explained the meaning of this clause in the decision concerning the German “Straßenbenutzungsgebühr” of 1992, which was constructed as a kind of user charge for motorways. Germany wanted to introduce the charge in one step with reducing the vehicle tax for German heavy trucks. The German government argued that the tax reduction would be necessary to eliminate the disadvantages of German carriers in comparison with those of other countries which already had a similar low rate vehicle tax. But the European Court saw a violation of Article 72 EC Treaty, because foreign carriers couldn’t take part of the compensation advantages that were caused from the tax reduction.³

The decision of the European Court has a particular implication for the idea of road pricing: Road pricing brings new financial strains for transport enterprises. These strains concern foreign carriers as well as local transport enterprises. Art. 72 EC Treaty prohibits in no way the introduction of new disadvantages for foreign European carriers. But it prevents the Member States from establishing new charges which bring relatively more disadvantages for carriers from other Member States than for domestic carriers. For that reason, it has to be recognised that it can be very problematic to introduce charging systems with different prices for local and other carriers.

This consequence, however, applies only to the charging rates for commercial enterprises in the transport sector. Art. 72 EC treaty is not applicable outside that area, in particular not with regard to the private use of cars.

³ European Court, 19/05/1992, Case C-195/90 (Commission ./ Germany), see notes 23 ff..

5. TAX PROVISIONS

In general, road pricing systems do not have the typical characteristics of a tax. The legal term “tax” is defined as a payment duty against state authorities which is not a service in return for an individual advantage given by the state. If the authority provides a kind of advantage to the individual – such as the given possibility to use roads, respectively the permission for using cars in a described area – the payment for the advantage indicates the character of “non-tax”. As long as road pricing systems are based on this model, they cannot get in conflict with any tax provisions.

If the authority creates a kind of charge without “reflection character”, there would not be any fundamental collisions with the EC tax provisions as well, because the current EC provisions do not restrict the Member States from establishing new charging or taxing instruments.⁴

Nevertheless, the EC tax law could become important for road pricing in another way, namely with regard to the provisions for VAT (value-added tax). The VAT belongs to the rare fields of tax law in which the Member States are confronted with harmonisation measures of the EC.

However, the provisions of the different VAT Directives do not determine the concrete amount of VAT within the EC. But they oblige to use uniform standards to determine the tax in the Member States. The relevant legal provision is the 6th VAT Directive.⁵ Article 4 (1) and (2) of the 6th Directive reads as follows:

- “1. Taxable persons shall mean any person who independently carries out in any place any economic activity specified in paragraph (2), whatever the purpose or the results of that activity.
2. The economic activities referred to paragraph (1) shall comprise all activities of producers, traders and persons supplying services including (...) activities of the professions. The exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.”

As an exception Article 4 paragraph 5 states:

- “5. States, regional or local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage the public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions.”

Consequently, the duty to pay VAT only plays a meaningful role in cases of public-private-partnership; in other words, in cases where the authority entrusts a private organisation with any task of the pricing system. Then the private organisation is forced to pay VAT on its own income. If the private enterprise is paid directly by the authority, the base to measure the

⁴ See the very strict conditions of Art. 93 EC Treaty for adopting tax provisions to the intend of harmonisation.

⁵ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of valued added tax; uniform basis of assessment, OJ 1977 L 145, p. 1.

VAT was simply this payment. In this case the VAT duty of the private partner would have only a minor influence on the charge rates.

Much bigger financial impacts have to be expected in cases of a “concession”. The crucial criterium of a concession is that the private partner is not paid by the public authority. Instead, he is authorised to draw the charges by himself and to take his profits directly from the charges. In that case the private enterprise takes the full economic risks. In a recent decision on the French motorway toll system - called “péage” - the European Court marked that kind of public-private-partnership as a sort of economic activity under the provisions of the 6th VAT Directive, Article 4 para. 2. The Court held that this kind of activity is not protected from the exemptions of Article 4 para. 5.⁶

In conclusion, it has to be considered that the specific instrument of a concession as a possible variation of public-private-partnership has an important practical disadvantage: In this case the VAT is to impose directly on the road using charge.

6. PUBLIC SERVICE CONTRACT PROVISIONS

Other requirements for the implementation of road pricing can be deduced from the EC provisions for public service contracts. The provisions demand a Europe-wide publication for all public service contracts for pecuniary interest with a volume of more than 200,000 ECU (EURO). Details are stated in the Directive 92/50/EEC⁷. Therefore, you have to consider that the procedures for the award of public service contracts for road pricing concepts have to be compatible with the special conditions of that Directive.

A certain exception again applies to “concessions” as a special kind of public private partnership. In cases of “public service concessions” the private enterprise has to bear the economic risks of the business. Because of this peculiarity the EC decided not to include such forms of engagement in the scope of the Directive for public service contracts. The jurisdiction of the European Court confirmed this interpretation. It held that the section Directive on public works contracts (71/305/EEC)⁸ was intentionally amended by the Directive 89/440/EEC⁹ to provide the inclusion of public works concessions, while the Council refrained from receiving a similar extension clause in the Directives for other public contracts.¹⁰

⁶ European Court, dec. of 12 September 2000, Case C-276/97 (Commission ./ French Republic – “péage”), see notes 29 ff.

⁷ Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, OJ 1992 L 209, p. 1.

⁸ Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts, OJ 1971 (II), p. 682.

⁹ Council Directive 89/440/EEC of 18 July 1989 amending Directive 71/305/EEC, OJ 1989 L 210, p. 1.

¹⁰ See European Court, dec. of 7 December 2000, Case C-324/98 (Telaustria ./ Telekom Austria), notes 46 ff.

7. STATE AID PROVISIONS

Finally, we have to analyse whether the state aid provisions of the EC treaty might have any importance for the adoption of road pricing concepts.

The relevant provision is Article 87 (1) EC Treaty. It states that any aid granted by a Member State or through State resources in any form is incompatible with the common market, if it distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, as far as it affects trade between Member States. Art. 87 (2) EC Treaty stipulates some specific exceptions, while Art. 87 (3) EC Treaty allows to introduce some more exceptions under certain conditions.

Obviously, road pricing itself is not a form of state aid. But we have to take into account that the European Court attributes a very broad meaning to the term “state aid”.¹¹ In particular, it includes any kind of exemption of a payment duty against a state authority which causes an economic advantage. From this point of view any exemptions from the road pricing charge must be classified as potential state aids. This interpretation, however, applies not to systematic distinctions in the regulation concept which are based on the aims of the charging concept. It affects only those exceptions which were set up to protect specific groups of individuals from the effects of road pricing.¹²

Even if an exception of the payment duty has to be characterised as a state aid, real problems of compatibility with the state aid provisions are improbable. We have to consider that Article 87 (1) EC Treaty demands two additional conditions for the determination that the aid constitutes a violation of this article. The advantage would have to distort or threaten to distort competition, and it would have to effect trade between Member States. At any rate, it is not realistic to expect any substantial negative influence on trade between Member States from measures with an exclusively local background.

8. CONCLUSION

We are, therefore, able to conclude as follows: EC provisions do not cause fundamental difficulties for establishing road pricing systems. In general, the adoption of a municipal or regional road pricing systems is compatible with EC law. With respect to some details of the concrete wording it is advisable to take a close look at the particularities of certain EC provisions to avoid unnecessary complications. In any case it will be possible to find adequate solutions to implement the road pricing approach.

For further information about this paper please contact:

Dr. jur. Stefan Klinski, Rechtsanwalt – Lawyer, Forster Strasse 38, D-10999 Berlin
Tel: (49) 30 6162 3729, Fax: (49) 30 6162 3729, e-mail: sklinski@fhw-berlin.de

¹¹ In the recent jurisdiction the European Court pointed out that the advantage must be financed by the state, see European Court, dec. of 13 March 2001, Case C-379/98 (Preussen Elektra – “German Stromeinspeisungsgesetz”), notes 54 ff.

¹² See European Court, Case C-73/91 (Sloman Neptun), ECR 1993 I-887, notes 19 ff.

Communicating Road User Charging Schemes

Rod Cartwright, Director, GCI London Ltd

Introduction

This paper has been prepared as part of the CUPID Internal Workshop on Road User Charging, to be held in Helsinki on 25th September 2001. In it I explore the communications challenges facing organisations wishing to put in place road user charging schemes, particularly in an urban context. Many of these challenges are, of course, not unique to road user charging schemes in their own right and hold true for most major public sector initiatives, in particular major infrastructure projects.

My central premise is that people have a fundamental problem with short-term change, even where they know it is in their long-term interests. This is the single factor that can make transport policy and transport planning so problematic. In light of this general aversion to change, I argue that a truly effective communications programme requires far more than simply a solid media relations strategy.

Taking the United Kingdom (UK) as an example, there are now 22.5 million cars on Britain's roads compared with 10 million in 1970. Over the past decade, traffic on the UK's motorways has increased by 49 per cent, with congestion costing the economy an estimated £18 billion per annum. Almost one third of traffic in urban areas now travels at less than eight kilometres per hour – in London it was faster travelling by horse and cart at the end of the last century than it is now during peak hours.

And yet, despite the damage that congestion does to our citizens' health and quality of life, including the anger and frustration of sitting in endless traffic jams, the opposition to road user charging is often instant and powerful. It is little coincidence that the British Government put in place the legislation to allow for road user charging and then instantly passed on the actual responsibility of implementing it to local authorities. Even the European Commission's recent Transport White Paper failed wholeheartedly to embrace road user charging beyond heavy goods vehicles.

Against this background, effective communications can and should play a key role in the development of any major road user charging scheme. Failure to plan and manage communications efficiently can undermine all the best technical planning in the world, making the most expertly designed scheme potentially undeliverable.

This paper aims to arm its readers with a clear understanding of:

- The **likely key issues** arising from major schemes;
- The **primary communications audiences** that should be considered; and,
- Some of the **fundamental communications principles** relevant to the communication of road user charging schemes.

However, it also provides a very **practical 10-Step Guide** to developing the effective communications infrastructure required to communicate a scheme of any significant size.

Likely Key Issues

One of the fundamentals of effective project communications is developing an early and comprehensive understanding of the issues likely to have the greatest impact on the way that a scheme is developed and communicated. Without such an understanding - together with an early analysis of likely communications risks - project teams can find themselves constantly and reactively ‘fighting fires’, as issues that they have neither foreseen nor planned for emerge.

The following are some of the key issues likely to face any team seeking to put in place a road user charging scheme:

a. “Tax on Wheels” and Use of Revenues

Fundamentally, the introduction of a road user charge in any form involves drivers being asked to spend money that they could previously have spent elsewhere – a ‘stick’ in policy terms. It is therefore almost inevitable that one of the key lines of attack that will be used by a scheme’s opponents is that it is “yet another tax” most likely to hit those least able to pay (i.e. a regressive and ‘unfair’ tax). With motorists and motoring organisations across Europe already angry about the rising cost of motoring, a careful line will need to be developed for any scheme to counter the almost inevitable “tax on wheels” accusation.

Coupled to this will be the critical importance of being able to demonstrate how the revenues generated by the scheme will be used to improve public transport alternatives, ideally through some form of hypothecation (i.e. ‘ring-fencing’ of revenues specifically for public transport improvements).

b. Demonstrable Benefits – ‘Gain’ Before ‘Pain’

Linked directly to the question of use of revenues is the key issue of timing, in terms of when real and obvious improvements will be made to public transport alternatives within an around the charging zone.

Drivers liable for the charge will rightly expect genuine improvements to be made to the relevant public transport system (e.g. bus, underground, light rail, ‘park and ride’) **before** the introduction of the scheme. Without these visible improvements – the ‘carrot’ to lure them out of their vehicles – there is likely to be considerable cultural resistance to the scheme, increasing the likelihood of opposition and, ultimately, attempts at evasion.

c. Consultation and the Legislative Basis

Clearly any policy initiative such as a road user charging scheme that brings with it potential issues relating to new taxes and fairness requires a very visible and obvious popular mandate, as well as a sound basis in legislation. Without such a mandate, opponents - political or otherwise – will claim that the scheme has been imposed “against the people’s wishes”.

It is therefore critical that some form of visible consultation is conducted, to show that the scheme has been designed taking into account the views of all stakeholders and that there is broad support in principle. While the absence of broad popular support for the basic premise

of the scheme will not make it impossible to implement, it will certainly make it far more difficult, not least in communications terms.

Equally, it will be important to communicate the legislative/legal basis of the scheme (e.g. whether it is based on national, regional or local legislation), in particular to avoid any form of legal challenge.

d. The Boundary

By definition, any charging scheme has to be geographically limited to a specific zone of operation. The selection and drawing of the boundary – down the minutiae of which side of a particular street the boundary is drawn – will be one of the most controversial and potentially problematic issues facing any scheme.

Demonstrating that sufficient traffic management measures will be put in place to avoid sizeable queues building up on the streets just outside the boundary will be crucial in allaying fears about ‘car parks’ forming near the boundary (with the subsequent concerns about safety). Consideration will also need to be given to the impact on property prices on either side of the boundary and the emotion (both positive and negative) this is likely to cause.

e. Traffic Displacement

Hand-in-hand with the boundary issue is that of traffic displacement. Drivers are almost certain to try to find ways of avoiding payment by skirting round the boundary and creating new ‘rat-runs’ certain to cause considerable anger among local residents. Again the effective communication of traffic management measures to minimise this effect will be critical.

f. Level of Charges and Fines

Clearly if citizens are to accept the notion of a charging scheme, they will need to feel that the charges involved – as well as the fines for non-compliance – are both understandable and fair. Clear indications will need to be given as to the basis for both charges and fine, as well as of the amount of revenue that specific levels of each will generate.

g. Exemptions

It is a fact of political life that people are more than happy to support new forms of funding for public services, provided that it is not they who have to pay for it. Thorough consideration will need to be given to specific groups who will be exempted from any eventual scheme (e.g. residents within the zone, emergency vehicles, disabled drivers, motorcycles and taxis), the impacts this will have on revenues and how such exemptions are consulted on and communicated.

h. Hours of Operation

We can safely assume that the objective on any road user charging scheme is to tackle traffic congestion, in particular at those peak periods when congestion is at its worst. It is therefore logical to assume that, at the very least, the hours of operation will need to include the ‘rush hours’ at each end of the day.

However careful consideration will need to be given to how far on either side of the rush hours the hours of operation should extend, whether the scheme should operate throughout the working day or, indeed, at all times. Once such decisions have been consulted on and made, they will need to be carefully communicated to all relevant audiences.

i. Effectiveness of Technology

Road user charging schemes are only as effective as the monitoring technology behind them. It is obviously a fundamental decision as to which type of scheme will be implemented (e.g. paper-based vs. area licence vs. full electronic). However, just as important is communicating why a specific technological option has been selected, how it will work and what level of effectiveness can be expected (e.g. predicted success rates in catching those who attempt to evade the scheme). Failure to communicate the basics of the scheme effectively will lead to confusion and, as a result, opposition.

j. Business Impacts

Clearly many individual drivers of private vehicles will, in the first instance at least, resist road user charging as an infringement of their right to drive their vehicles. However, potentially far more important will be the support or opposition of the organised business lobby, representing organisations both within and outside the zone whose businesses may be affected by the scheme.

Explaining the basis of the scheme to the business community at an early stage, as well as driving home the message that reduced congestion actually brings with it tangible business benefits (e.g. reduced delivery times), will be critical in securing the support of this crucially important stakeholder group.

k. Environment and Health

It is one of the central tenets of integrated transport policy that transport developments cannot and should not be separated from their environmental and health impacts. Where a scheme can be shown demonstrably to improve measures such as air quality, these elements should be drawn out and promoted aggressively.

The issues identified in this paper are not intended to be exhaustive or definitive, as many issues will emerge that are specific to individual schemes and will depend on their design and context. However, the issues I have explored above cover the majority of generic areas that will be common to all schemes. As such they should provide initial ‘food for thought’ in terms of identifying and preparing for the issues relevant to your scheme that are likely to emerge.

1. The Audiences

On one of the easiest and most fundamental mistakes made in developing communications programmes for major projects is the assumption that communications consist of little more than simple media and public relations (i.e. communicating directly with the media and the public) – important though this is. What is so often overlooked is the complex network of other stakeholder groups and individuals who can exercise important influence over the way that a scheme is portrayed and received.

Side-by-side with the identification of key issues should go the identification and analysis of all stakeholder audiences – internal and external – likely to have an impact on the ultimate success or failure of the project.

The following is an example of the way in which different audiences can be segmented in order to provide a clearer set of communications targets to be included in the overall communications programme.

a. *‘Enablers’/‘Deliverers’*

Enablers or Deliverers are those individuals or organisations – often internal to the project in question – who hold the technical and political skills, resources and influence to enable the scheme successfully to be designed, developed, communicated, implemented and monitored:

This group will typically include:

- **Core project delivery community**, including the core project team (e.g. engineering, transport planning, traffic management, project management, communications) and key project partners (e.g. local authorities); and,
- **Political enablers**, those individuals and groups who hold the political or legislative powers to allow the scheme to be developed and implemented.

Creating a high level of understanding of the scheme among these audiences, as a means of securing their buy-in and support, is crucial in ensuring that external messages are mirrored by those put across by internal members of the overall team.

b. *Influencers*

Clearly, major initiatives such as road user charging schemes do not exist in a vacuum. Rather, they are schemes with political backing likely to generate widespread interest and debate among a range of key influencers – stakeholders whose views, comments and opinions can have an important bearing on the way that such debates progress.

The ‘Influencer’ group will include the following broad categories:

- **The Media**, print and broadcast; generalist and specialist; on- and off-line; at a national, regional and local level. They represent the main forum in which the key issues surrounding the scheme will be debated, analysed and assessed. Careful media management is, therefore, project-critical;
- **Special interest groups**, including think-tanks, environmental groups, pressure groups and disabled organisations likely to pass comment on the scheme in both general and specific terms; and,
- **Political stakeholders**, such as Members of Parliament (MPs), Members of the European Parliament (MEPs) and local government members/officials. While not having a direct input into the implementation of the project, they will see themselves as having a role to play on behalf of their constituents, both in elected forums such as Parliament or through comment in the media.

It is critical to ensure from the outset that all Influencer groups are identified and proactive stakeholder strategies developed to secure their understanding and support.

c. Recipients

Ultimately, the success or failure of a road user charging scheme can be assessed by the level of support and acceptance it receives amongst its ‘Recipients’ – those individuals and groups directly effected by the scheme and the organisations that represent them. One guaranteed way to sink a proposed road user charging scheme at an early stage is to fail to secure the understanding, support and backing of the very people who will ‘consume’ the end product.

Recipients can be broken down as follows:

- **Road users affected by the charges**, including not only private car drivers, but also taxis, motorcyclists, cyclists, pedestrians van/lorry drivers and couriers – clearly a critical group whose support in both principle and practice will be critical;
- **The business community**, who will need to be convinced that the business benefits of the scheme outweigh the disbenefits;
- **Public transport operators**, who may have to provide the extra capacity needed to handle a likely increase in demand for their services;
- **Public transport users**, who may be influenced by increased crowding on public transport;
- **Residents**, on both sides of the boundary for whom issues such as traffic displacement and the impact on property prices will be important; and,
- **The ‘General public’**, all of whom are likely to fall somewhere within the other ‘Recipient’ categories, but who may also wish to view the issue with a degree of objectivity.

No communications programme relating to a road user charging scheme of any size can be complete without strategies for ‘winning hearts and minds’ by communicating ‘direct to the consumer’. As always, such strategies should be based on a rigorous segmentation of these groups and an analysis of the issues relevant to each.

Key Communications Principles

In section 5 I provide a simple and practical 10-Step Guide to establishing an efficient and effective communications programme for a road user charging scheme. However, before doing so, I will examine briefly some of the underlying communications principles that apply to all major projects:

a. Prepare for and Accept Opposition

Human nature dictates that people naturally resist change of all kinds – it makes them feel uneasy and uncomfortable. As the saying goes, “*you can’t please all of the people all of the time*” and it is crucial to accept that any proposal that involves individuals or groups being asked to change their behaviour and, in particular, spend money, is likely to generate some form opposition. Such opposition should be foreseen, predicted and prepared for.

b. Context is Everything ... and Nothing

It is naturally important to dominate the broad media and political debates that will emerge about the principles underlying a scheme and provide its context. However, it should also be accepted that for the vast majority of people, the way in which they perceive the scheme will be determined by a handful of very specific and very localised issues directly relevant to them. It is therefore important to adopt both a 'top-down' and 'bottom-up' approach at the same time, to ensure the debate is won at every level.

c. Preparation is Everything ... and Nothing

As outlined above, it is critical to prepare in detail for the range of issues likely to emerge in relation to the scheme. This said, it is also inevitable that issues that simply cannot be foreseen will arise. On this basis, issues management procedures must be put in place to allow for unforeseen issues to be dealt with rapidly and efficiently.

d. Stakeholders Matter

The way in which major schemes are viewed and consumed is determined not only by the most obvious players such as the media, but also by a complex web of other stakeholders whose views and opinions provide important 'raw material' for those media. It is crucial that serious consideration is given to how these stakeholders are engaged with and managed, in order to avoid a broad coalition of opposition developing.

e. Internal and External Must Balance

While it is mainly external audiences who will determine public perceptions of the scheme, it is critical to maintain a well-briefed, motivated and enthusiastic core team, to ensure that positive external messages are not contradicted by internal disquiet.

f. Involve and Engage Wherever Possible

A guaranteed route to communications disaster is the failure to engage and involve the broadest possible range of stakeholders in the development and implementation of the scheme. Wide-ranging, visible and proactive communications and consultation should therefore form a core part of any scheme.

g. Divide and Rule

Each key stakeholder group will have its own issues, areas of interest, concerns and priorities. Identifying at an early stage these priorities and proactively tackling them directly with each group makes them feel 'special' and minimises the risk of isolated groups coming together to form a dangerous coalition of opposition.

h. Drive Home the Benefits

At the end of the day, it would be absurd to propose a scheme that did not have broad ranging and tangible benefits for a wide range of stakeholders. It is critical to develop at the earliest possible stage a set of unambiguously positive 'key benefits' which can then be referred to continuously in all communications.

i. Culture will Play its Part

There can be no such thing as an ‘off-the-shelf’ communications programme for road user charging schemes, as cultural issues in different countries will play a crucial role. For example, Britain and America have a deep-seated dislike of anything that looks like a tax, but still expect first-rate public services. Numerous continental European countries, by contrast, accept the direct link between taxation and levels of public service. It is these often fundamental issues which will play a critical role in determining how a specific road user charging scheme will be perceived and – consequently – how it should be communicated.

Such principles, while not exhaustive, provide the basis on which an effective communications programme can be developed and which should be borne in mind at all times as that programme unfolds.

2. A PRACTICAL 10-STEP GUIDE TO COMMUNICATING ROAD USER CHARGING SCHEMES

I conclude with a simple and practical 10-Step Guide which will help you put in place the communications infrastructure required to communicate a major road user charging scheme.

1. Put in Place a Suitably Skilled Team

As this paper has shown, communicating major projects such as road user charging schemes require wider skills and experience than simply media relations. Ensure that you have a team equipped with the necessary integrated campaigning and stakeholder management skills to be able to deal with all eventualities.

2. Develop a Coherent and Consistent ‘Story’

The key to success in communications is simplicity and consistency – telling a clear story whose key themes do not change and that is easily comprehensible to all audiences. Spend considerable time at the outset working on your story, in particular the main themes, key messages and – above all – tangible benefits of the scheme.

3. Conduct a Careful Segmentation of All Audiences

The success or failure of major projects can be determined by a enormously wide range of stakeholders. While it is, of course, critical to win the media battle, ensure that you have conducted a clear segmentation of all your audiences as the basis for tailored communications with each group.

4. Develop a Rigorous Issues and Risk Management Plan

All major projects bring with them communications risks and generate problematic issues – some foreseeable, others less so. Make sure that you conduct an early analysis of the likely project and communications risks. Use the findings as the basis of a structured issues management procedure for dealing with issues as they emerge.

5. *Establish a Proactive Political and Stakeholder Strategy*

As I have argued, the political and stakeholder communities can play a key role in determining the direction of the debates surrounding road user charging schemes, not least through their role as commentators in the media. Spend time developing specific and proactive political and stakeholder contact management strategies, based on an analysis of key stakeholders' likely concerns, issues and priorities.

6. *Develop a Proactive and Planned Media Strategy*

While the media are not the sole determinant of how key debates will unfold, their role is clearly central to any major project. Ensure that you establish a clear and proactive media management strategy/plan, focusing on all types of media (print and broadcast; on-and off-line; generalist and specialist; national, regional and local) and aiming to generate a flow of positive and interesting stories across all types of media.

7. *Consider On-Line Campaigning*

The internet has revolutionised the way that communications can work, in particular as a powerful tool for protest and action groups opposed to specific projects/initiatives. Consider how the on-line world can be used to best advantage, for example through on-line consultation, web-based communications via a specific project web-site and the development of a virtual press office.

8. *Establish an Engaging Internal Communications Programme*

The morale and motivation of the core project team and key project partners can play a key role in securing the success of a scheme. Develop a phased internal communications including elements such as newsletters, a project intranet and project team seminars, to ensure that the core team share the sense of vision and ambition held by senior management.

9. *Put in Place Rigorous Monitoring Systems*

It is correctly said that "information is power" and one of the greatest risks in communications is not knowing about developments before or as they happen. Put in place thorough political, media and stakeholder monitoring systems to ensure that the project and communications teams are not caught unawares by important developments.

10. *Use Advertising Judiciously*

Advertising is an expensive medium, but if used carefully can reap considerable rewards. Within the constraints of your budget, consider the use of space in the 'paid-for media', in particular at key times in the life of the scheme (e.g. around consultations or major launches).

Conclusions

Fundamentally, road user charging schemes represent change and, more importantly, require both individuals and organisations to change their behaviour and spend money. Human nature naturally resists such change and no matter what their size, such schemes will,

therefore, rarely be developed or implemented without some form of controversy or opposition.

Crucially the way in which the debates that will emerge surrounding them unfold will be determined by a complex web of stakeholders that go far beyond the media – the instinctive ‘first port of call’ for most project managers looking to put in place a communications programme for their projects.

This paper has shown that through careful preparation and planning – in particular in terms of the segmentation of audiences and analysis of risks – almost all eventualities can be dealt with. With the right team in place, a clear and consistent ‘story’, and a proactive communications programme that is based on some core strategic principles, it is possible to ensure that it will not be project communications that derail the project that you so strongly believe will bring real transport and broader benefits.

For further information or queries on this paper, please contact:

Rod Cartwright
Director
GCI London Limited
New Bridge Street House
30-34 New Bridge Street
London EC4V 6BJ

Tel: +44 20 7072 4069
Fax: +44 20 7072 4010
E-Mail: rcartwright@gciuk.com