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Chris Scoggins Esq  
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Association of Train Operating Companies (ATOC)  
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Dear Chris

### **RTTI Code of Practice**

You will be aware that we invited comments from third parties on your draft Code of Practice. You will also be aware that our final view on whether or not the Code fully met the concerns which we set out in our decision of 17 November 2009 was dependent upon the views of third parties.

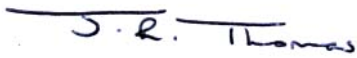
We have now received responses from six stakeholders. We were pleased to see more than one stakeholder comment that, even in its draft form, the Code represents a step forward. A number of concerns were, however, expressed. These concerns, together with our view on how we think you should respond, are summarised (a number of respondents asked to remain anonymous) at the attached Annex.

A general theme running through most or all responses was a level of concern around the extent of the discretion that the Code gives NRE in those areas that are subject to interpretation. Such concerns go to the heart of what the Code is trying to achieve in terms of providing third parties with confidence that NRE will treat all parties fairly and that no new products or services will unreasonably be denied to market. The success of the Code and its ultimate credibility will turn crucially on the extent to which NRE upholds its purpose. We would therefore welcome a commitment from NRE that this will be the case.

We are not yet in a position to indicate that we are satisfied that the Code will achieve its objectives. To help us to move towards such a position, I would of course be happy to discuss the contents of this letter and next steps. Please get in touch if you think a meeting might help speed up the process.

It is our intention to publish both this letter and your response to it.

Yours sincerely

A handwritten signature in black ink that reads "J.R. Thomas". The signature is written in a cursive style with a horizontal line above the first part of the name.

John Thomas

## Annex A

We have categorised the key concerns of stakeholders, to which we now invite your response, as follows:

- (a) The proposed criteria against which applications will be assessed (see the end of the first page and beginning of the second page of the draft Code) are too heavily weighted in NRE's favour;
- (b) The processes for applying set out within the draft Code provide little by way of comfort that third parties will be able to plan their business on the strength of commitments given (particularly in relation to timescales); and
- (c) The 'appeals' mechanism set out under the heading *How to use the Code* is not sufficiently independent of the individuals who will carry out initial appraisals of applications for access to RTTI.

### *(a) Assessment criteria*

We believe that there would be benefit in NRE now taking the following steps:

- Revising the code to clarify that reasons for refusal will be provided in detail and in writing. Clarification here should include the time period within which a written explanation will be provided. Either within the Code or in a separate response, NRE should also set out what it will provide by way of reasoning.
- Providing some further clarification around the information that will be required of applicants. A notable example of this is what is meant by "financial details". We think it would be helpful for NRE to specify that all items (such as references, particularly in the case of established industry players) are not compulsory but that more information is generally preferable.

In assessing the any "*adverse impact on TOCs*" we would be concerned if any undue weight were being placed on NRE's own revenues. It would, therefore, be useful for NRE to provide clarification that this will not be the case.

### *(b) Processes*

We would invite NRE to consider whether the timescales mentioned, for both stages of the application, could be shortened. We also ask whether some further commitments could be provided within the Code to provide firms who are working to short timescales. An example

of this is firms wanting to use RTTI access to supply a third party, rather than providing information directly to customers. We suggest that NRE might commit to employing its best efforts to work in a way that is consistent with such timescales.

*(c) 'Appeals' mechanism*

It is important that the Code is not immediately undermined by concerns around impartiality. We therefore believe that there would be significant value in NRE considering :

- adding further detail which explains how the NRE board will provide an element of independence; or
- proposing an alternative mechanism.

*(d) Other issues*

The headings (a) to (c) above cover, as we see it, the most important issues raised by respondents. But a number of other points were raised. We invite you to consider these points, listed below and to explain how these concerns might be addressed through amendment to the Code, or some other means which would provide the same result.

- Numbering of the sections or clauses of the Code would be useful in referring to its provisions.
- It would be useful for applicants for NRE to provide an example application, i.e. one that met all of its applicant requirements.
- The draft Code offers no commitment to offer a service level agreement (SLA) and does not, for example, clarify how RTTI users would be protected in the event that other users placed extreme demands on pull services.
- The requirement for a fresh application for each use of the data was questioned.
- The draft Code says that any output generated from a push feed must be "*consistent with the information provided by NRE*". Respondents queried whether this requirement is appropriate, given that a third party might be able to generate information that provides additional benefit to passengers whilst not being consistent with the information generated by NRE itself.
- The reasons for charges being incurred at 'stage 2' are not sufficiently clear.
- *Data interface specification and messaging structure* - it would be preferable to publish an open specification rather than providing it only on request. In addition, some guidance or commitments on how changes to this specification should be

provided in order to avoid an NRE change having an adverse effect on an existing third party service.

- There is currently no provision within the Code for how ATOC will monitor and enforce compliance with conditions of use. Such information would be beneficial.
- Option “d) Form of service” arguably implies that ‘push’ feeds are not currently available, and therefore that they are likely to have to be funded by applicants. The text additionally states that no amendments are to be made to the data and that consistency with the information provided by NRE must be maintained. This may not result in a solution for passengers that adds “additional benefit”, and therefore almost all proposals can be refused.