

Briefing Note: Meeting with Toll 14/11/07

ONTRACK management and advisors met with Toll NZ senior management this morning.

The purpose of the meeting was to agree the process for progressing negotiations on the possible purchase of the rail business.

Yesterday (13 November), ONTRACK had proposed a process involving the following steps:

- Toll provides information allowing ONTRACK to make a high quality (but non-binding) indicative offer for Toll NZ (with or without TranzLink).
- ONTRACK would make this offer prior to Christmas.
- Toll would respond to this offer.
- Subject to Toll's response, final due diligence (largely confirmatory) would follow early in the New Year.

Toll's counterproposal of 13 November was a process that involved ONTRACK making an early indicative offer for Toll's complete NZ business based almost entirely on public information. Based on that indicative offer, Toll would decide whether to proceed with further discussions.

The ONTRACK proposal was structured to try and avoid a situation where ONTRACK put forward an 'uninformed' indicative offer that might require substantial revision post the receipt of detailed information. We also believe that our process is the quickest route for the parties to reach a meaningful agreement.

The discussion on the alternative processes was difficult. Toll was adamant that they would not contemplate any alternative to their process.

After some time, ONTRACK proposed a variation to the Toll process involving the disclosure of limited non-public information and an earlier (and lower quality) indicative offer for the entire business.

Since the meeting ended, Toll have indicated that this variation may be acceptable and expect to confirm this shortly.

If they confirm that this is acceptable it is likely that we will receive limited further information this week and advise Toll that we propose making an indicative offer by the end of November.

Comment

Toll's stated reason for not accepting our process was that they did not want to engage in detailed discussions until they know that ONTRACK's assessment of value meets their needs. Only then would it be worth them devoting the resources to closing a transaction.

However, the real reasons for their insisting on their process may be:

- A desire to get ONTRACK / The Crown at least partially committed to a price prior to detailed discussions.
- A desire to get ONTRACK / The Crown 'outed' as trying to purchase the rail business. They may believe that once ONTRACK / The Crown is publicly identified as pursuing the rail business it will be under pressure to successfully complete a transaction in the near term.

In this respect, it is probably prudent for The Crown / ONTRACK to have a media strategy developed in the event of a leak.