

**Kath McIndoe**

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**From:** Chris Mackenzie [Chris.Mackenzie@parliament.govt.nz]  
**Sent:** Tuesday, 8 April 2008 6:47 a.m.  
**To:** William Peet  
**Cc:** Murdo Beattie; pat.bowler@russellmcveagh.com  
**Subject:** Re: DRAFT Note for Chris Mack re Toll 7Apr08 imars-1797767

**Attachments:** DRAFT Note for Chris Mack re Toll 7Apr08 imars-1797767.doc



DRAFT Note for  
Chris Mack re T...

Feedback from Michael is positive but before he will decide on sending he asked if there was anything I thought should be added - I told him I had asked you to draft memo.

One area that has not been mentioned is FCL and Pat you will remember that it was an area where Toll were concerned last Wednesday.

Is there something that we could put in to cover FCL?

Regards

Chris

(Chris Mackenzie  
Senior Advisor  
Deputy Prime Minister's Office  
(04) 471 9935 or (021) 799 499)

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"William Peet"  
<William.Peet@ont  
rack.govt.nz>

07/04/2008 04:07  
pm

To  
<Chris.Mackenzie@parliament.govt.nz  
>

cc

"Murdo Beattie"  
<murdo.beattie@cam.co.nz>,  
<pat.bowler@russellmcveagh.com>

Subject  
DRAFT Note for Chris Mack re Toll  
7Apr08 imars-1797767

Chris

Attached note

WP/MB/PB(See attached file: DRAFT Note for Chris Mack re Toll 7Apr08  
imars-1797767.doc)

TO: Chris Mackenzie  
FROM: Minister of Finance  
DATE: 7 April 2008

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### 1. **Negotiations with Toll**

I understand that the negotiations with Toll are encountering some difficulties around the mechanics of the separation of the rail business (RailCo) from TTL. In particular, Toll appears concerned that the Crown as owner wishes to own trucks and enter the LCL, freight forwarding or logistics businesses.

This memorandum sets out my views on these issues. I would like you to ensure that these views are circulated to the wider Crown negotiating team so that there is no misunderstanding. You can also show this memorandum to the Toll negotiators if you think that would be helpful.

### 2. **Government's Objectives**

The Government's objective in acquiring RailCo is to enhance the efficiency and effectiveness of the rail network (including inter-island ferries) and ensure it plays its full part in the future of New Zealand's transport infrastructure.

There is no intention for RailCo to own trucks or enter the LCL or logistics businesses.

However, we are acquiring the RailCo business and I require the Government to have a full set of strategic options for the future. I am therefore not prepared to make any contractual undertakings to any third parties (including Toll) that constrain the future strategic or business model options available to the owners of the RailCo in the medium to long term.

### 3. **Negotiations**

From my perspective therefore, the arrangements with Toll need to cover:

- The assets / customers that go with each of RailCo and TTL. As part of this separation I would have no difficulty with transitional arrangements that protect the customer allocations in the separation agreement for a year or two.
- How the parties will work together over the transitional period.
- An end date after which there are no enforceable obligations undertakings or commitments. I want this to be crystal clear because I do not want to create another NRAA type contract where both parties think one document means different things.

I am happy for the Crown's strategy for rail to be recorded at this time and I have no objection to "no trucks/ LCL / logistics" being recorded as part of this strategy as I fully expect to require that to be recorded in the initial Statement of Corporate Intent (SCI) for RailCo under Crown ownership. However, I will not accept there being any obligations undertaking or

commitments of the Crown, RailCo or ONTRACK for the reasons outlined above, beyond the transition period.

#### 4. Solutions

I understand Toll could be interpreting the Crown's unwillingness to include the business model in contract documentation as a sign that rail intends to be predatory as regards the TTL business and has an agenda to enter the trucking business.

This is not the case. If Toll need more comfort on this point I would be happy with the following solution:

- Strengthened undertakings around the RailCo / TTL separation that make the TTL and RailCo cashflows more secure – providing always that these do not constrain rail's commercial options following the transition period; or
- The Crown acquires rail and TTL and then sells TTL post-acquisition. If this approach were favoured by Toll I would have no problem with an undertaking to offer TTL for sale within twelve months with similar transitional protection afforded to the purchaser but I would not see any preference to Toll being part of this sale process.

The pricing of the rail and TTL businesses will need to reflect the terms of the separation arrangements.