



Office of Hon Dr Michael Cullen

Deputy Prime Minister

Attorney-General

Minister of Finance

Minister in Charge of Treaty of Waitangi Negotiations

Leader of the House of Representatives

12 March 2008



Paul Little
Managing Director
Toll Holdings
Level 7, 380 St Kilda Road
Melbourne VIC 3004
AUSTRALIA

Dear Paul

I thought it best if I wrote to you directly to confirm the Government's firm interest in purchasing Toll's rail and related business in NZ and to set out the parameters for the next stage. We believe that such a transaction is the best way forward, if it can be completed quickly, cleanly and at a fair and defensible price.

As you know, during my discussion with David Jackson last week I agreed to defer any announcements or actions for two weeks while the parties made a final attempt at reaching agreement. To this end the Government's negotiating team met with David Jackson and his team yesterday. While the meeting confirmed that both parties were interested in pursuing a sale transaction subject to acceptable terms, it appears that there was some genuine misunderstanding on other aspects of the negotiation.

To recap, our position is:

- We made an indicative offer of \$575 million for the equity in the business (including TTL). We have also indicated that we could see scope for a positive 10% variance on that figure (i.e. \$632 million) subject to rapid progress, satisfactory terms and no negative surprises in due diligence.
- Toll indicated initially that it considered equity values in the order of \$1 billion were required to reach agreement. It indicated a figure of \$930 million to ONTRACK in mid-February and in the discussion yesterday suggested that this figure might be reduced to around \$880 million.

- Discussions then stalled because the Government negotiating team indicated that they had no authority to discuss figures anywhere near this level.

I understand that Toll has put forward a range of valuation material in the discussions to date but that yesterday's discussion centred around the reference point established by the successful offer to the minorities last year and the Grant Samuel (GS) valuation that was prepared in response to Toll's offer. Toll's position yesterday was that a significant premium to that GS value was required.

The equity value of the business in the purchase of Third Avenue's interest and the minorities was \$630 million. The GS range for the equity in the business was \$608 million to \$698 million.

The Government acknowledges that the transaction with the minorities represents a public benchmark and that the GS report is the last public reference point for some third-party valuation material. However, we believe that these reference points have a number of deficiencies. I understand these have been discussed with your team in the negotiations but the major concern is that they do not capture the charges payable under the NRAA and what that means for the future cashflows for the business.

In addition, I note that all recognised market benchmarks have declined materially since the Toll offer was launched on 29 June 2007. I have no doubt that our respective negotiation teams could argue about the degree of decline and the extent to which this justifies a reduction compared to the price paid to the minorities.

Combining this with our view of the GS work leads me to believe that anything around the current Crown indicative offer represents a fair offer and a good outcome for Toll and its shareholders. In particular, I believe it clearly represents a better value outcome than Toll could achieve under any other foreseeable set of circumstances or if this transaction was contestable.

While I do not wish to indicate a completely inflexible position I think it is important that the Toll Group understands that this is the Government's view. Consequently, the Government does not see any agreement being possible at a value materially in excess of the value in the Toll offer to its minorities and I see little value in further negotiation while Toll is maintaining that a significant premium to the GS valuation is required. If we do not make progress in the next week I expect to proceed with the announcements and actions I foreshadowed in my call to David Jackson last week.

We should also not lose sight of the fact that even if we are able to reach a conditional agreement on price it will be important that we develop the terms of any transaction in some more detail before we announce anything. I am happy for the Government team to spend time with your team on these issues while Toll considers its response to this letter.

It is in both our interests to resolve this quickly and get a satisfactory outcome. I look forward to hearing from you soon.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M. Cullen', written in a cursive style.

Hon Dr Michael Cullen
Minister of Finance

CC: Rt Hon Helen Clark
Prime Minister

David Jackson
CEO, Toll NZ