

21 February 2008

The Hon Dr Michael Cullen
Minister of Finance
Parliament Buildings
Bowen Street
WELLINGTON

Dear Minister

This letter is to update you on discussions with Toll regarding the acquisition of their New Zealand business.

Background

- In December, ONTRACK made an indicative non-binding offer of \$300m to 350m for the equity in Toll New Zealand.
- Toll rejected this offer. They made a presentation to ONTRACK on 17 January suggesting that the equity in Toll NZ was worth nearer \$1 billion. At this presentation, Toll also indicated that they wished to retain Toll TranzLink (TTL).
- You were briefed further on 25 January. Following this briefing, ONTRACK revised their indicative non-binding offer for the equity to \$575m and this was forwarded to Toll on Monday 4 February.
- Over the last two weeks there have been extensive discussions and correspondence between Toll, ONTRACK and their respective advisors. Much of the discussions have been centred on the value of TTL.
- Toll's tactics have been to:
 - » Avoid responding to the \$575m offer.
 - » Focus on determining a value for TTL and land release while leaving the value of the remaining business open.
 - » Draw ONTRACK into a detailed valuation discussion on the non-TTL parts of the business.
- ONTRACK's tactics have been to:
 - » Seek a clear response from Toll on the \$575m offer for the entire business.
 - » Decline to enter a detailed valuation discussion (we believe the \$575m offer to be a full valuation of the business).
 - » Seek to accommodate Toll's desire to agree a value for TTL (it appears the parties might agree on an enterprise value for TTL around \$80m).

Toll has now formally rejected the \$575m offer for the entire business. Their final letter on Friday 15 January included a counteroffer of \$930m for the equity in the business and \$850m for the equity in the business excluding TTL.

Next Steps

We believe Toll's counteroffer of \$930m represents an unrealistic view of the value of their New Zealand business. In our view, they are continuing to test the willingness of the Crown to pay rather than proposing a reasonable price.

At this juncture, the choices for progressing this negotiation from ONTRACK's perspective are:

- Revise the current indicative offer upwards.
- Seek to have Toll revise their expectations downwards.

Subject to your comments, we favour the latter as a pathway to achieving purchase at an acceptable price. We think it is unlikely that \$930m is their true reserve value. We set out below some thoughts on how they might be assisted to revise their position.

We believe a public discussion of Toll's situation will be helpful in them reaching a satisfactory position on value. Currently, equity analysts covering Toll (ABN Amro, JP Morgan and Citigroup) assess the enterprise value of the New Zealand business in the range of NZ\$771m to NZ\$971m. These represent equity values of \$570m to \$770m. In negotiations, Toll continually quotes these valuations as "independent, third-party support" for the value they are putting on the business. However, and more importantly, the analyst valuations suggest that a sale at or near ONTRACK's indicative offer will be a negative surprise for Toll's shareholders and will result in a share price fall. Toll directors will always seek to make the sale a positive surprise. Based on the current ONTRACK offer, this can only occur if there is a substantial downward revision in the market's view of the value of the New Zealand business.

Currently, we do not believe that equity markets are adequately informed as to the performance of the New Zealand business or the issues it faces under the NRAA. In particular, we believe the analysts are assuming ongoing concessions from the Crown on charges payable by Toll under the NRAA. In Toll's letter to us of 8 February, they noted in response to our comments about NRAA implementation:

"The risk of protracted NRAA disputes goes both ways, and could reduce the value of the business to the Crown as well. We reiterate that this option should be a last resort and we will do everything we can to avoid this scenario".

It will be important to provide tangible evidence to Toll that the negotiations are over (at least for the meantime), and the clearest way to do that is to remove the TAC subsidies for opex and the cap on the WACC and depreciation charge.

To revise the external views on the value of the New Zealand business we consider that some public discussion (formal or informal) on all the following points is critical:

- Confirmation that detailed negotiations have taken place with Toll but that they are no longer active.
- Confirmation that the NRAA as signed in 2004 will continue for now.
- Confirmation of the cessation of any concessions under the NRAA now, with full charges resuming 1 March 2008.

- Informal briefing (by Cameron Partners) of equity analysts and media covering Toll's New Zealand business.

Material along these lines will focus analysts' attention on the value of Toll's New Zealand business and the opportunities available to Toll. We believe this focus will cause them to revise their valuations downwards and help to put Toll management in a position where it can support a sale at a lower price.

At some stage in the coming period it may also be useful for you to advise Paul Little directly of the government's position.

If your diary permits, we would like the opportunity to discuss these issues with you.

It is recommended that you:

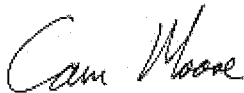
- (a) Agree that ONTRACK should advise Toll that it is discontinuing negotiations on the acquisition of the New Zealand business.

YES / NO

- (b) Agree that ONTRACK should liaise with your office regarding any announcements.

YES / NO

Yours sincerely



Cam Moore
Chairman